



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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Des Moines, IA 50319
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ARC 4969B 1399

Notice, County maintenance file input
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Filed Emergency, National change of address
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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
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Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
Nov. 15	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
Dec. 13	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
Dec. 27	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 24, 2006	April 12, 2006
22	Friday, April 7, 2006	April 26, 2006
23	Friday, April 21, 2006	May 10, 2006

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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2005 SUMMER EDITION

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
EDUCATIONAL EXAMINERS BOARD[282]		
Class G license—preparation for school guidance counselor endorsement, 14.132 IAB 3/1/06 ARC 4940B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 21, 2006 2 p.m.
Substitute authorization, 14.143(2), 14.143(3) IAB 3/1/06 ARC 4939B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 21, 2006 2:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Environmental covenants, ch 13, 135.12, 137.7 IAB 3/15/06 ARC 4983B	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	April 5, 2006 1:30 p.m.
Water use/water allocation program, amendments to chs 50 to 54 IAB 3/15/06 ARC 4982B	Conference Room, Suite I 401 SW Seventh St. Des Moines, Iowa	April 5, 2006 10 a.m.
Organic materials composting facilities, 105.1, 105.3, 105.5 to 105.8, 105.14 IAB 2/15/06 ARC 4893B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 15, 2006 10 a.m. to 12 noon
HUMAN SERVICES DEPARTMENT[441]		
Consumer choices option for certain HCBS waivers, amendments to chs 77 to 79, 83 IAB 3/15/06 ARC 4980B	Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa	April 5, 2006 9 to 10 a.m.
	Conference Room 3 Wapello County DHS 120 E. Main St. Ottumwa, Iowa	April 5, 2006 9:30 to 11 a.m.
	Sixth Floor Conference Rm. 605 A&B Scott County Administrative Center 428 Western Ave. Davenport, Iowa	April 5, 2006 10 to 11 a.m.
	Conference Room A Trospen-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	April 5, 2006 10 to 11 a.m.
	ICN Room Pottawattamie County DHS Office 417 E. Kanesville Blvd. Council Bluffs, Iowa	April 5, 2006 1 to 2 p.m.
	Fifth Floor ICN Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	April 6, 2006 9 to 10:30 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	April 6, 2006 9 to 10 a.m.
	Second Floor Conference Room Story County Human Services Bldg. 126 S. Kellogg St. Ames, Iowa	April 6, 2006 10 to 11 a.m.
	Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	April 6, 2006 10 to 11 a.m.
Support enforcement services, 98.24(5), 98.43(2), 98.45, 98.47 IAB 2/15/06 ARC 4900B	Suite 400 501 Sycamore Waterloo, Iowa	March 15, 2006 9 to 10 a.m.
	CSRU Conference Room 3911 West Locust St. Davenport, Iowa	March 15, 2006 10 to 11 a.m.
	Third Floor DHS Conference Room 799 Main St. Dubuque, Iowa	March 15, 2006 10 to 11 a.m.
	Suite 225 520 Nebraska St. Sioux City, Iowa	March 15, 2006 10 to 11 a.m.
	Third Floor Conference Room 1901 Bell Ave. Des Moines, Iowa	March 16, 2006 9 to 10 a.m.
	Conference Room, Suite 32 300 West Broadway Council Bluffs, Iowa	March 16, 2006 10 to 11 a.m.
	Seventh Floor Conference Room 411 Third St. SE Cedar Rapids, Iowa	March 17, 2006 8 to 10 a.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Benefits advisory committee membership; contribution rates for special service members, amendments to chs 1 to 12, 14, 15, 17, 19, 22, 26, 30 IAB 3/1/06 ARC 4927B	7401 Register Dr. Des Moines, Iowa	March 21, 2006 9 a.m.
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LABOR SERVICES DIVISION[875]

Occupational safety and health regulations—adoption by reference, 26.1 IAB 3/1/06 ARC 4943B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	March 21, 2006 2 p.m.
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LATINO AFFAIRS DIVISION[433]

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NATURAL RESOURCE COMMISSION[571]

Commercial fishing—shovelnose sturgeon, 82.2 IAB 3/1/06 ARC 4922B	Municipal Bldg. 502 S. First St. Guttenberg, Iowa	March 28, 2006 7 p.m.
	Conference Room D Clinton County Administration Bldg. 1900 N. Third St. Clinton, Iowa	March 29, 2006 7 p.m.
	Starr's Cave Nature Center 11629 Starr's Cave Park Rd. Burlington, Iowa	March 30, 2006 7 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Barbers—competency examination, 20.1, 25.5 IAB 3/1/06 ARC 4915B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 21, 2006 1:30 to 2 p.m.
Behavioral science—retention of overpayments, 30.1 IAB 3/1/06 ARC 4933B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 24, 2006 9:30 to 10 a.m.
Cosmetology arts and sciences— retention of overpayments, 59.1 IAB 3/1/06 ARC 4913B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 24, 2006 9 to 9:30 a.m.
Hearing aid dispensers, 120.1, 124.5 IAB 3/1/06 ARC 4914B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 21, 2006 1 to 1:30 p.m.
Optometrists—CELMO certification, 181.3(2), 181.4(2) IAB 3/15/06 ARC 4976B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 10:30 to 11 a.m.
Physical therapists—overpayments, 199.1 IAB 3/15/06 ARC 4961B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 10 to 10:30 a.m.
Occupational therapists— overpayments, 205.1 IAB 3/15/06 ARC 4960B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 10 to 10:30 a.m.
Psychologists—retention of overpayments, 239.1 IAB 3/1/06 ARC 4916B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 24, 2006 8:30 to 9 a.m.
Respiratory care practitioners, 260.1 IAB 2/15/06 ARC 4884B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 9 to 9:30 a.m.
Social workers, 279.1, 281.3(2) IAB 3/15/06 ARC 4958B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 20, 2006 9 to 9:30 a.m.

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Interpreters for the hearing impaired, 360.1 IAB 3/15/06 ARC 4973B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 4, 2006 9:30 to 10 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

Fire marshal, amendments to ch 5 IAB 2/15/06 ARC 4904B (See also ARC 4903B)	Conference Room, Suite N 401 SW Seventh St. Des Moines, Iowa	March 24, 2006 9:30 a.m.
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TRANSPORTATION DEPARTMENT[761]

Motor carrier regulations, 529.1 IAB 3/15/06 ARC 4975B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	April 6, 2006 10 a.m. (If requested)
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UTILITIES DIVISION[199]

Eligibility, certification, and reporting requirements for eligible telecommunications carriers, amendments to chs 1, 22, 39 IAB 3/15/06 ARC 4977B	Hearing Room 350 Maple St. Des Moines, Iowa	April 26, 2006 9 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

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ARC 4985B**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 8, “Professional Conduct of Licensees,” Iowa Administrative Code.

This amendment replaces the current rule that regulates the offering of engineering or land surveying services by firms. The purpose of this new rule is to protect the public from misleading or deceptive advertising by business entities that hold themselves out to the public as providing professional engineering or land surveying services and to guard against the unlicensed practice of professional engineering or land surveying by persons who are not properly licensed to perform such services in the state of Iowa.

Waiver of these rules may be sought pursuant to 193—Chapter 5.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before April 4, 2006. Comments should be directed to Glean Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021, or by telephoning (515)281-7360.

This amendment is intended to implement Iowa Code sections 542B.6, 542B.21, and 542B.26, and chapter 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind rule 193C—8.5(542B) and adopt in lieu thereof the following **new** rule:

193C—8.5(542B) Engineering and land surveying services offered by business entities.

8.5(1) Purpose of rule. The purpose of this rule is to protect the public from misleading or deceptive advertising by business entities that themselves hold out to the public as providing professional engineering or land surveying services and to guard against the unlicensed practice of professional engineering or land surveying by persons who are not properly licensed to perform such services in the state of Iowa. This rule shall not be construed as restricting truthful advertising by business entities that appropriately place professional engineers or land surveyors in responsible charge of the professional services offered to and performed for the public.

8.5(2) Definitions. For purposes of this rule, the following definitions shall apply:

“Business entity” shall include corporations, partnerships, limited liability companies, persons using fictitious or assumed names, or any other form of entity which may conduct business.

“In responsible charge” means having direct control of and personal supervision over any land surveying work or work involving the practice of professional engineering. One or more persons, jointly or severally, may be in responsible charge. Indicia of being “in responsible charge” include:

1. Obtaining or setting the project or service parameters or criteria.

2. Dictating the manner and methods by which professional services are performed.

3. Establishing procedures for quality control and authority over professional services in a manner that ensures that the professional licensee is in control of the work and of all individuals performing the work under the licensee’s supervision.

4. Spending sufficient time directly performing the work or directly supervising the work to ensure that the licensee is familiar with all significant details of the work.

5. Maintaining familiarity with the capabilities and methods of the persons performing professional services, and providing adequate training for all persons working under the licensee’s direct supervision.

6. Sustaining readily accessible contact with all persons performing professional services by direct physical proximity, or as appropriate in the licensee’s professional judgment, by frequent communication, in clear and complete verbal and visual form, of information about the work being performed.

7. Specifically pertaining to land surveying, reviewing all field evidence and making all final decisions concerning the placement of survey monuments and surveyed lines.

“Professional services” shall include professional engineering and land surveying services, as defined in Iowa Code sections 542B.2(5) and (8) and 542B.27, as applicable to the fact situation at issue.

8.5(3) General rule. Business entities offering professional services to the public must be owned, managed, or appropriately staffed by one or more professional engineers or land surveyors, as applicable, who are in responsible charge of all professional services offered and performed.

8.5(4) Appropriate staffing. The nature and extent of appropriate staffing by licensed professionals is necessarily a fact-based determination dependent on such factors as the nature and volume of professional services offered and performed, the risk of unlicensed practice, the impact of the professional services on the life, health and safety of the public and the public’s property, and the representations made to the public. While the legal nature of the business entity’s relationship (e.g., owner, manager, employee) with a licensed professional engineer or land surveyor is not necessarily determinative, licensed professionals must be in responsible charge of all professional services offered and performed.

8.5(5) Professional engineering or land surveying firms. Business entities holding themselves out to the public as professional engineering or land surveying firms cannot satisfy the requirements of this rule solely by retaining, through employment or contract, a licensed professional on an as-needed, occasional or consulting basis. Such an arrangement fosters unlicensed practice by the unlicensed owners or managers who place themselves in charge of determining when a licensed professional is needed. When a business entity conveys to the public that it is organized as a firm of licensed professionals, the public has a right to expect that the firm retains the full-time services of one or more licensed professionals. “Full-time” in this context is not measured by hours, but by a licensee’s sustained, meaningful, and effective, direct supervision of all professional services performed, whether the firm performs services, for example, 20 hours per month or 80 hours per week.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

8.5(6) Restricted services. Business entities that do not generally hold themselves out to the public as professional engineering or land surveying firms, but that do offer some type of professional engineering or land surveying service, shall be appropriately staffed by licensed professionals in a manner that (a) corresponds with the representations made to the public, (b) places licensed professionals in responsible charge of all professional services performed, and (c) guards against the unlicensed practice of professional engineering or land surveying.

8.5(7) Permitted practices.

a. Nothing in this rule is intended to prevent an individual or business entity from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplinary project.

b. Nothing in this rule shall prevent a joint venture arrangement between an engineering or land surveying firm and a business entity that is not owned, managed, or staffed by professional engineers or land surveyors, in which the venturing entities jointly and truthfully offer professional engineering or land surveying services on a project-by-project basis. Licensed professional engineers and land surveyors who participate in such arrangements shall ensure that the public is accurately informed as to the nature of all professional services to be performed and by whom.

8.5(8) Remedies against licensees. Licensed professional engineers or land surveyors who aid and abet the unlicensed offering or practice of professional engineering or land surveying, or who otherwise knowingly participate in a business entity that does not comply with this rule, are engaging in unethical practices that are harmful or detrimental to the public and are subject to disciplinary action by the board.

8.5(9) Remedies against business entities and unlicensed individuals. Pursuant to Iowa Code section 542B.27, the board may by order impose civil penalties against any business entity or unlicensed individual that offers or performs professional services in violation of Iowa Code chapter 542B. The board shall apply the guidelines set forth in this rule in determining whether a violation exists and in establishing an appropriate civil penalty. Civil penalties may not exceed \$1000 for each offense. Each day of a continued violation constitutes a separate offense. In addition to a civil penalty or as an alternative to such remedy, the board may seek an injunction in district court to prevent future violations by business entities or by licensed or unlicensed individuals.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Regulatory Analysis

The Department of Natural Resources hereby gives public notice of the completion and publication of a regulatory analysis, and of a public hearing concerning rules proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4652B**.

ARC 4652B contained proposed administrative rules which would establish wastewater fees for NPDES permit holders in Iowa. The proposed rules were reviewed by the Administrative Rules Review Committee at its meeting on December 13, 2005. The Committee voted to require the Department of Natural Resources (DNR) to complete analysis

of the proposed rules in compliance with Iowa Code section 17A.4A, subsection 2, paragraph "a." In the Notice of Intended Action, the deadline for accepting comments on the proposed rules was established as December 2, 2005. Eighteen public hearings were held on November 29, 30, and December 1 of 2005, through the Iowa Communications Network. As a result of the requirement to complete a regulatory analysis, the period for public comment on the proposed rules will be extended to April 7, 2006.

A public hearing on the regulatory analysis and to accept further public comment on the proposed rules will be held at 1:30 p.m. on April 6, 2006, in the Fourth Floor Conference Rooms of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, 50319. Persons may present their views orally or in writing at the public hearing. Any written comments or information regarding the regulatory analysis or the proposed rules may be directed to Courtney Cswercko by mail or electronic mail at the addresses indicated by 5 p.m. on April 7, 2006, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact Courtney Cswercko by telephone or in person at the Department office by 5 p.m. on April 7, 2006. Notice is hereby given that the period for accepting public comment on the rules proposed in the Notice of Intended Action published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4652B**, will terminate at 5 p.m. on April 7, 2006.

The full text of the regulatory analysis may be obtained on the Web site of the Department of Natural Resources at <http://www.iowadnr.com/water/npdes/rulemaking.html> or by contacting Courtney Cswercko, Environmental Specialist, NPDES Permits Section, by telephone at (515)281-7206 or electronic mail at courtney.cswercko@dnr.state.ia.us.

CONCISE SUMMARY OF REGULATORY ANALYSIS

The regulatory analysis contains each of the elements specified in Iowa Code section 17A.4A, subsection 2, paragraph "a," subparagraphs (1) through (6). The purpose of the proposed rule is to supplement the existing wastewater funding sources to improve the wastewater program and to achieve goals for program improvement. All entities that must apply for or hold a wastewater construction permit, NPDES General Permit #5, or individual non-stormwater NPDES permit will be affected by and bear the cost of these rules, as fees are proposed to be added for all of these permit types. Each different type of entity required to have a wastewater construction permit, NPDES General Permit #5, or individual non-stormwater NPDES wastewater permit will incur a different cost.

State revenues will increase by the total amount of the proposed fees, estimated to be \$877,200 annually. Costs of the proposed rule include an increased financial burden on entities required to have or apply for a wastewater construction permit, NPDES General Permit #5, or individual non-stormwater NPDES permit. The benefits of the proposed rule to the permittees include better service on their permits, quicker turnaround times for permits, and more assistance for small facilities. Costs of inaction on the proposed rule to the permittees include continued delays in processing all aspects of their NPDES permits. Costs of inaction on the proposed rule to the DNR include a continued lack of staff resources to meet all of the needs of the permittees and to meet the goals of the NPDES program.

One less costly method to supplement existing funding sources for the NPDES and AFO programs would be lower than the proposed amount of the fees. As proposed, the fees

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are already lower than those in the surrounding states. Another method of collecting fees that would be less costly to many of the smaller regulated entities would be to base the wastewater fees for the non-stormwater NPDES permits on the design flow of the regulated facility, rather than on the type of facility. The option to charge fees based on the design of the facility was presented at a stakeholder meeting in early 2005, before the fee rules were developed. The stakeholders preferred a fee based on facility type and on the relative level of effort required to issue permits and regulate each facility, as this would be easier for entities to understand, and would be easier for the DNR to administer.

ADDITIONAL CONSIDERATIONS

The proposed rule currently directs these fees to the State General Fund, but the DNR is proposing legislation to redirect these fees to the DNR. The fee rules were proposed under the assumption that the proposed fees will be redirected to the DNR by the state legislature during the current (spring 2006) session. If the rule becomes effective and the proposed fees remain directed to the general fund, and no money from these fees is redirected to the DNR, none of the benefits listed in the full text of the regulatory analysis will be applicable and the regulated community will retain all of the costs. The DNR will propose a bill this session to divert the funds from the wastewater fees back to the DNR.

If the proposed fees are redirected from the general fund to the DNR, the fees will be used to add three NPDES permit writers, one construction permit engineer, one wasteload allocation engineer, and six field office staff. The additional staff will allow the wastewater program to meet its goals, as stated in the full text of the regulatory analysis.

ARC 4983B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.474 and 455B.105, the Environmental Protection Commission proposes to adopt new Chapter 13, “Environmental Covenants,” and to amend Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” and Chapter 137, “Iowa Land Recycling Program and Response Action Standards,” Iowa Administrative Code.

These amendments implement provisions of 2005 Iowa Acts, Senate File 375, which amends sections of Iowa Code chapters 455B and 455H (codified in 2005 Iowa Code Supplement) and which creates new Iowa Code Supplement chapter 455I entitled “Uniform Environmental Covenants Act.” 2005 Iowa Acts, Senate File 375, establishes a new real estate instrument called an “environmental covenant,” which may be used by owners of property, responsible parties and other interested parties, the Department and other state and federal regulatory agencies as a type of institutional control for the purpose of restricting land use activities and

managing the risk of future exposure to existing contaminant conditions.

Iowa Code Supplement section 455B.474(1)“f”(4) authorizes the Commission to adopt rules regarding the application of institutional controls and specifically the use of environmental covenants created in accordance with Iowa Code Supplement chapter 455I as part of a Department-approved corrective action plan at leaking underground storage tank (LUST) sites regulated under Commission rules in Chapter 135. Iowa Code Supplement section 455H.206 authorizes the use of environmental covenants created in accordance with Iowa Code Supplement chapter 455I as one form of institutional control to satisfy remedial standards under the Land Recycling Program (LRP) established in Iowa Code Supplement chapter 455H and implemented by Commission rules in Chapter 137. Iowa Code Supplement section 455B.103 grants the Director of the Department broad discretion to enter into environmental covenants and to accept and maintain other types of real property interests.

These amendments remove references in Chapter 135 to the use of a common law deed restriction called a “restrictive covenant,” which the Department has used as an institutional control prior to enactment of 2005 Iowa Acts, Senate File 375. These amendments also remove references in Chapter 137 to an “environmental easement,” which the Department had been authorized to use as an institutional control prior to enactment of 2005 Iowa Acts, Senate File 375. The amendments to Chapters 135 and 137 require that environmental covenants utilized in both the LUST and LRP programs conform to the standards established in new Chapter 13.

Iowa Code Supplement section 455I.4(1) specifies certain general provisions which must be included in an environmental covenant. Iowa Code Supplement section 455I.4(2) grants parties to the environmental covenant broad discretion to negotiate additional provisions. The proposed rules in new Chapter 13 prescribe minimum standards and review procedures and clarify certain provisions which must be included in an environmental covenant and those which may be included in an environmental covenant. The proposed rules reserve the Department’s authority to negotiate discretionary provisions on a case-by-case basis and identify some discretionary subject areas which may be included in environmental covenants.

The proposed rules recommend that the environmental covenant be drafted in accordance with a model form developed by the Department in order to achieve uniformity and more efficient review and approval. Environmental covenants drafted using the model form and language and submitted with all supporting documentation in accordance with the rules would be granted presumptive approval by the Department. The rules provide flexibility by granting parties the option to propose revisions and alternative language to the model form on a case-by-case basis.

The rules have proposed discretionary provisions which would, for example, give the Department authority to require notice of a change in property ownership, notice of a substantial change in use of the property and notice of noncompliance with the activity and use limitations by subsequent transferees of the affected property. The proposed rules provide for disclosure of and reference to the environmental covenant in a groundwater hazard statement as provided in Iowa Code section 558.69 when the Department or the grantor determines that conditions on the affected property would require disclosure in a groundwater hazard statement as provided in Iowa Code section 558.69. Iowa Code section 558.69 requires disclosure when the Department determines that a solid waste disposal site is “potentially hazardous” or if

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“hazardous waste” as defined exists on the site. The Department is specifically soliciting public comment on the general subject of what types of notices should be mandatory or discretionary provisions in an environmental covenant and under what conditions these notices might be required.

The proposed rules describe the procedures for submittal and review of a proposed environmental covenant and the minimum supporting information and documentation which must be provided in order for the Department to review, approve and sign the covenant. The rules provide that the Department will generally sign the environmental covenant as an “agency” as defined in Iowa Code Supplement section 455I.2(2) and referenced in Iowa Code Supplement section 455I.3, without taking an interest in property as a “holder” as defined in Iowa Code Supplement section 455I.2(7). However, the Department is reserving the discretion to sign on as a holder taking an interest in property. The Department is especially interested in comment from the legal community and others on these rules and the general subject area of what quality and quantity of supporting documentation should accompany a draft environmental covenant. The Department specifically requests comment from the legal community as to whether there are legal or practical considerations that should be taken into account with regard to the question of whether the Department signs as a holder with an interest in property or signs in its capacity as an agency with all the enforcement and other rights granted by 2005 Iowa Acts, Senate File 375.

Any interested person may submit written comments on the proposed amendments on or before April 7, 2006. Written comments should be sent to the Iowa Department of Natural Resources, Attn: David Wornson, Wallace State Office Building, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail david.wornson@dnr.state.ia.us.

Also, a public hearing will be held on April 5, 2006, at 1:30 p.m. in Conference Room 4E, Wallace State Office Building, Des Moines, Iowa, for the purpose of soliciting comment on these proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These amendments are intended to implement Iowa Code sections 455B.474 and 455H.105 and Iowa Code Supplement chapter 455I.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** chapter:

CHAPTER 13
ENVIRONMENTAL COVENANTS

567—13.1(455B,455H) Definitions. The definitions in 2005 Iowa Code Supplement section 455I.2 are incorporated by reference. In addition, as used in the chapter:

“Department” means the Iowa department of natural resources.

“Director” means the director of the Iowa department of natural resources.

“Source site” means the property(ies) on which the source(s) of contamination exists and which extends to or has

a causal relationship to the area of concern subject to the terms and conditions of the environmental covenant.

567—13.2(455B,455H) Environmental covenants. A person requesting department approval of an environmental covenant is responsible for the preparation and submittal of a draft environmental covenant using a model form(s) and model language developed by the department and submittal of supporting documentation. The department will grant presumptive approval to environmental covenants which conform to department model forms and model language. The parties to the environmental covenant may propose revisions to the model language and model form by clearly noting any proposed revisions and making a written request for consideration and approval. The department recommends that the activity and use limitation language in the environmental covenant conform to model language developed by the department.

567—13.3(455B,455H) Supporting documentation. Supporting information and documentation shall be submitted with the proposed environmental covenant. Supporting documentation must be sufficient for the department to determine the legal capacity of all legal and equitable interests in the property, to verify the accuracy of the legal description of the affected property and its relationship to the contaminated area of concern, and to ensure that all legal and equitable interests necessary to establish a valid and enforceable environmental covenant have been accurately identified. Documentation shall include, but not be limited to:

13.3(1) An opinion which is prepared by an attorney and which represents that sufficient research has been conducted to identify all persons with a recorded interest in the affected property and other legal and equitable interests necessary to establish a valid and enforceable covenant free of any competing or subordinate property interests. Persons other than an attorney may submit supporting documentation in accordance with department guidance developed to assist them in conducting property interest research and identification of all legal and equitable interests necessary to establish a valid and enforceable covenant. The department may require on a case-by-case basis that an attorney prepare the covenant and supporting documentation and that an abstract of title be prepared or updated when necessary to identify and confirm all legal and equitable interests necessary to establish a valid and enforceable covenant. Property interests which must be identified include, but are not limited to, fee title and equitable titleholders (i.e., contract sellers and buyers), lessees of the property, and consensual lienholders such as mortgagees.

13.3(2) Copy of a current deed, contract for deed, or other property transfer instrument verifying the person(s) or business entity(ies) holding fee and equitable title in the property subject to the covenant. Proof of the legal capacity of other equitable interests and signatories to the covenant must be documented by provision of a copy of the applicable real estate instrument such as a mortgage or other consensual lien instrument.

13.3(3) A plat map or other official document which accurately depicts the boundaries of the affected property by legal description and as legally described in the environmental covenant. The map must be adequate to verify the relationship of the legally described property subject to the environmental covenant to (a) the contaminant source(s) areas, (b) the source site(s) subject to regulation such as an underground storage tank site, (c) the contaminated area of concern to which the terms of the environmental covenant are in-

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tended to apply, and (d) other adjoining or affected properties.

567—13.4(455B,455H) Recording and approval. An environmental covenant shall be recorded as provided in 2005 Iowa Code Supplement section 455I.8. An environmental covenant shall not be recorded without the approval and written signatures of the director or the director's appointed designee and all designated signatories. Signatures shall not be obtained on an environmental covenant until the environmental covenant and all supporting documentation have been reviewed and approved by the department.

567—13.5(455B,455H) Mandatory provisions. The environmental covenant shall contain provisions which adequately address the subject areas designated in 2005 Iowa Code Supplement section 455I.4(1). The language to address these mandatory provisions is contained in the department's model forms but may be revised as provided in rule 567—13.2(455B,455H). The environmental covenant and any other accompanying documents shall satisfy the formatting and recording requirements of Iowa law and specifically Iowa Code section 331.606B. All environmental covenants must have a proper signature acknowledgment as provided in Iowa Code sections 9E.14 and 9E.15. In addition to these mandatory provisions, the environmental covenant shall contain provisions that satisfy the following:

1. Require any signatory to the environmental covenant to notify the department of conditions which would constitute a breach of the activity and use limitations contained in the covenant.

2. Reserved.

567—13.6(455B,455H) Optional provisions. On a case-by-case basis, the department may require additional provisions in the environmental covenant within the subject areas authorized in 2005 Iowa Code Supplement section 455I.4(2) and otherwise within the department's authority. These provisions may include, but are not limited to:

13.6(1) A provision which requires a standard disclosure in a groundwater hazard statement in accordance with Iowa Code section 558.69 and department rules in 561—Chapter 9. A standard notice could be required if the department or the grantor determines that the property subject to the covenant constitutes a solid waste disposal site which is potentially hazardous or if hazardous waste exists on the property as provided in Iowa Code section 558.69.

13.6(2) A provision which requires notice to the department of any transfer of legal or equitable title in the property, notice of the establishment of a long-term lease, or notice of substantial change in use of the property subject to the environmental covenant. This provision may be added when the department finds the need to monitor compliance with and maintenance of the activity and use limitations and when the risks to health, safety and the environment warrant a higher degree of oversight.

13.6(3) A provision which places affirmative duties on subsequent transferees of equitable or legal title in the property or long-term lessees to inspect, monitor and report on conditions and continued compliance related to the activity and use limitations at the property subject to the environmental covenant. This provision may be added when the department finds the need to monitor compliance with and maintenance of the activity and use limitations and when the risks to health, safety and the environment warrant a higher degree of oversight.

567—13.7(455B,455H) Modification and termination. Modification or termination of the environmental covenant shall be in accordance with 2005 Iowa Code Supplement chapter 455I and the terms of the environmental covenant.

567—13.8(455B,455H) Signatories to the environmental covenant.

13.8(1) Agency. The department will sign the environmental covenant as an "agency" as defined in 2005 Iowa Code Supplement section 455I.2(2), and without taking an interest in the property as provided in 2005 Iowa Code Supplement section 455I.3(2). The department will generally not be a "holder" as defined in 2005 Iowa Code Supplement section 455I.2(7) but reserves the right to sign as a holder on a case-by-case basis when it determines that holding an interest in the property is beneficial to satisfying the regulatory objectives of the environmental covenant.

13.8(2) Holders. The fee title owner of the affected property is required to sign the environmental covenant in the capacity as a grantor and may be required to sign as a holder/grantee as provided in 2005 Iowa Code Supplement section 455I.2(7) if necessary to establish a valid instrument. A contract buyer holding equitable title is required to sign as a holder. When the grantor of the environmental covenant is not the owner of the source site subject to regulation, or is not the person or entity responsible for conducting corrective action at the source site, the department may require the owner of the source site, a person or entity that is the party responsible for corrective action or the person or entity that has conducted the corrective action at the source site to sign on to the environmental covenant as a holder. The department may require a participant in an enrolled site regulated under 567—Chapter 137 to sign the environmental covenant as a holder if the participant has an interest in ensuring compliance with the terms of the environmental covenant and particularly if the participant has responsibility for corrective action or has undertaken corrective action at the enrolled site.

13.8(3) Subordinated interests. As provided in 2005 Iowa Code Supplement section 455I.3, all equitable or other property interests affected by the environmental covenant must consent to and subordinate their interests to the environmental covenant either by signing it or by signing a separate subordination and consent agreement approved by the department. These interests include, but are not limited to, lessees, mortgagees and other consensual lienholders.

567—13.9(455B,455H) Notice. In accordance with 2005 Iowa Code Supplement section 455I.7, persons requesting approval of the environmental covenant shall certify that copies of a recorded environmental covenant have been sent to:

1. Each person signing the environmental covenant.
2. Each person holding a recorded interest in the property subject to the environmental covenant but which is not a signatory.
3. Each person in possession of the property subject to the environmental covenant, including lessees, sublessees, assignees of a lease, and current owners and operators of the business assets on the affected property.
4. Each municipality or other unit of local government in which the property subject to the environmental covenant is located. The department may identify the appropriate official or specific unit of government depending on the applicable activity and use limitations specified in the environmental covenant.
5. Each current owner or operator of the underground storage tank to which the environmental covenant relates.

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6. Any other person which the department designates, including an adjoining property owner.

These rules are intended to implement Iowa Code sections 455B.474 and 455H.105 and Iowa Code Supplement chapter 455I.

ITEM 2. Amend paragraph **135.12(8)“a”** by rescinding numbered paragraph **“4”** and adopting in lieu thereof the following **new** numbered paragraph:

4. An environmental covenant as provided in 2005 Iowa Code Supplement section 455B.474(1)“f”(4)(f) and in accordance with the provisions of 2005 Iowa Code Supplement chapter 455I and 567—Chapter 13;

ITEM 3. Amend subrule **137.7(2)** by rescinding paragraph **“e”** and adopting in lieu thereof the following **new** paragraph:

e. An environmental covenant established in accordance with 2005 Iowa Code Supplement chapter 455I, 2005 Iowa Code Supplement section 455H.206, and 567—Chapter 13.

ITEM 4. Rescind subrule 137.7(3) and adopt the following **new** subrule in lieu thereof:

137.7(3) Environmental covenants. Participants may submit a draft environmental covenant to the department for review and approval in accordance with 567—Chapter 13.

ITEM 5. Amend subrule 137.7(6) as follows:

137.7(6) Enforcement of institutional and technological controls. Institutional and technological controls which have been incorporated into a no further action certificate pursuant to rule 137.10(455H), or have been approved prior to issuance of a no further action certificate, may be enforced in Iowa district court by the department, a political subdivision of this state, the participant or any successor in interest to the participant as provided in Iowa Code Supplement section 455H.206(4). *Enforcement of the terms of an environmental covenant shall be in accordance with 2005 Iowa Code Supplement chapter 455I, 567—Chapter 13, and the terms of the environmental covenant.*

ITEM 6. Amend subrule 137.7(8) as follows:

137.7(8) Modification and termination of institutional and technological controls. A participant or successor in interest to a participant, or an owner of property subject to an institutional or technological control, may seek approval from the department for the removal, discontinuance, modification or termination of an institutional or technological control. The ~~persons~~ *person* must demonstrate that the control in its present form is no longer required to ensure compliance with applicable standards. The person seeking revision must undertake sufficient risk assessment and provide sufficient assessment data to establish that the applicable compliance standards can be met based on the proposed modification. The department may also determine based on a revised assessment that the applicable controls are no longer effective to meet compliance standards and may require other response action. The department shall issue an amendment to any previously issued no further action letter specifying the approved modification of the institutional or technological controls. *Modification and termination of an environmental covenant shall be consistent with these rules and shall conform with 2005 Iowa Code Supplement chapter 455I and 567—Chapter 13.*

ARC 4982B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3, 455B.105, 455B.171, 455B.261, 455B.262, 455B.264 through 455B.274, 455B.278, 455B.279, and 455B.281, and chapter 460, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 50, “Scope of Division—Definitions—Forms—Rules of Practice,” Chapter 51, “Water Permit or Registration—When Required,” Chapter 52, “Criteria and Conditions for Authorizing Withdrawal, Diversion, and Storage of Water,” Chapter 53, “Protected Water Sources—Purposes—Designation Procedures—Information in Withdrawal Applications—Limitations—List of Protected Sources,” and Chapter 54, “Criteria and Conditions for Permit Restrictions or Compensation by Permitted Users to Nonregulated Users Due to Well Interference,” Iowa Administrative Code.

These chapters pertain to the water use/water allocation program, which is a permit program that was administered by the Natural Resources Council until it merged in 1983 with the agency now called the Department of Natural Resources. Few changes have been made to the program or its rules since that time, and revisions are needed. The administrative updates include eliminating expired dates, updating references, eliminating obsolete rules, and clarifying existing language in the rules. Other proposed changes to these chapters:

- Clarify existing definitions, including the definition of “consumptive use” as it applies to community public water supply systems (Ch. 50);
- Adopt definitions for “specialty crop” and “general crop” (Ch. 50);
- Update forms and clarify usage of the forms in the rules (Ch. 50);
- Correct the references to the Department’s Iowa Geological Survey (IGS), certified well contractor, and licensed professional engineer (Chs. 50 to 54);
- Eliminate the requirement for the IDNR’s Flood Plain Section to review a surface runoff plan at a rock quarry (Ch. 50);
- Incorporate new legislation that requires water use permits for community public water supply systems to be posted in the newspaper of largest circulation in the county as well as the newspaper nearest the locale of the permittee to comply with the new requirement (Iowa Code section 455B.265 as amended by 2005 Iowa Acts, House File 768) (Ch. 50);
- Clarify the water use permitting of cooling/heating systems using groundwater (Ch. 51);
- Exempt public water system “consumptive use” from the protected flow restrictions (Ch. 52);
- Remove six “protected water use” locations from the protected streamflow table (Ch. 52); and
- Modify the emergency conservation rules to be consistent with other rules of the Iowa Administrative Code (Ch. 52).

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These proposed amendments were presented to a water use stakeholder advisory group during one large-group meeting on October 6, 2005. Three small-group meetings were held to further discuss the proposed amendments. The stakeholder advisory group was comprised of individuals representing a wide variety of stakeholders, including public drinking water organizations, energy production, cities, environmental interests, well drillers, aggregate (sand and gravel) producers, conservation interests, agribusiness (animal and crop production), irrigators, turfgrass production, golf courses, consulting engineers, the U.S. Geological Survey, and other state agencies. The initial large-group meeting notice was posted on the state of Iowa public notice Web site, and the meeting presentations and handouts (including draft rules) were posted on the IDNR Water Use Web site.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before April 12, 2006. Such written materials should be directed to Diane Moles, Water Supply Engineering Section, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; fax (515)725-0348 or diane.moles@dnr.state.ia.us. Persons wishing to convey their views orally should contact Diane Moles at (515) 725-0281.

When submitting comments, stakeholders are encouraged to utilize the following guidelines. These guidelines aid in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or on behalf of a municipality, business, or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on April 5, 2006, at 10 a.m. in the conference room at the IDNR Water Supply Office, 401 SW 7th Street, Suite I, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These amendments are intended to implement Iowa Code sections 17A.3(1)"b," 455B.105, and 455B.171 and chapters 455B, division III, part 4, and 460.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule ~~567~~—**50.2(455B)** as follows:

Amend the following definitions:

~~"Certified well contractor"~~ means a well contractor certified by the department who has successfully passed an examination prescribed by the department to determine the applicant's qualifications to perform well drilling or pump services or both pursuant to ~~567~~—Chapter 82.

~~"Consumptive use"~~ means any use of water which involves substantial evaporation, transpiration, incorporation of water into a product or removal of water from a source without return thereto. Consumptive uses include, but are not limited to, irrigation, evaporative cooling, and flooding of wildlife areas by withdrawals or diversions from watercourses or aquifers. ~~Water use by community public water supplies is not considered to be consumptive in the administration of rules 567—52.3(455B), 52.4(455B) and 52.8(455B).~~

~~"Controlled aquifer test"~~ means a test, as approved by the department, for the pumping from a well at a controlled rate for a specified duration while water levels are accurately measured at given frequencies in the pumping well and other nearby wells which use the same aquifer. ~~Data collected from such a test is suitable for determining aquifer hydrologic properties.~~

~~"Industrial use"~~ means a use of water by manufacturing, processing, commercial, and other industrial facilities incidental to providing a product or a service; excluding domestic use, irrigation use, livestock use, *nonindustrial* power generation use, and recreational and aesthetic use. Examples include but are not limited to manufacturing, food processing, industrial cooling, excavation and processing of rock and gravel products, commercial laundries, cooling of perishables and electrical power generation other than for public consumption.

~~"Irrigation use"~~ means a use of water which is artificially applied to land to aid the growing of general farm crops (~~hay, corn, soybeans, oats, grain sorghum and wheat~~) and specialty crops.

~~"Livestock use"~~ means a use of water in the production of domestic animals such as *for* drinking, sanitation and cooling.

~~"Protected source"~~ means a surface water or groundwater source recognized by rule as *deserving needing* special protection in order to ensure its long-term availability, in terms of either quality or quantity, or both, to preserve the public health and welfare.

~~"Recreational and aesthetic use"~~ means a use of water which can be easily curtailed and is not essential for the preservation of life, the general welfare, or the state's economic base. Examples include but are not limited to flooding of wildlife areas; filling of pools and fountains; nonessential cooling; car washing; street cleaning; washing of other exterior surfaces such as windows and walls; amusement park-type water rides; turf watering such as lawns, golf courses, *and* athletic fields; and watering of landscape plantings.

~~"Sufficient water supply"~~ means a nonregulated well which is capable of providing enough water for the nonregulated use. ~~When considering a new water supply, acceptable water quality relative to the old water supply is also a factor.~~

~~"Uses that were nonregulated prior to July 1, 1985"~~ means beneficial uses of water in excess of 25,000 gallons per day by:

1. Any person of the surface flow from streams bordering the state.

2. Any municipal corporation or person supplying a municipal corporation which had not increased its maximum per day use of water by 100,000 gallons, or 3 percent, whichever is greater, than its highest per day beneficial use prior to May 16, 1957; had not utilized a new source of water after May 16, 1957; and had not moved its withdrawal points more than one-half mile from withdrawal points utilized prior to May 16, 1957.

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3.—Any self-supplied industrial user of water which was located within the territorial boundaries of a municipal corporation on May 16, 1957; had not increased its maximum per day use of water by more than 3 percent above its highest per day beneficial use prior to May 16, 1957; had not utilized a new source of water after May 16, 1957; and had not moved its withdrawal points more than one-half mile from withdrawal points utilized prior to May 16, 1957.

4.—Any other self-supplied user of water which was located within the territorial boundaries of a municipal corporation on May 16, 1957; had not increased its maximum per day use of water above its highest per day beneficial use prior to May 16, 1957; had not utilized a new source of water after May 16, 1957; and had not moved its withdrawal points more than one-half mile from withdrawal points utilized prior to May 16, 1957.

Adopt the following **new** definitions in alphabetical order: “General crop” means hay, corn, soybeans, oats, grain sorghum or wheat.

“Specialty crop” means all other crops not listed as a general crop, including but not limited to melons, sod farm or seed corn.

ITEM 2. Amend rule 567—50.3(17A,455B) as follows:

567—50.3(17A,455B) Forms for withdrawal, diversion or storage of water.

50.3(1) Application forms. The following application forms are currently in use:

Form 16: Application for Permit to Divert, Store, or Withdraw Water for Beneficial Use. 1/84. 542-3105 *Application for a New Water Use Permit or to Modify an Existing Water Use Permit.* 542-3106.

Form 17: Application for Permit to Use Water for Irrigation. 1/84. 542-3106.

Form 18: Application for Permit to Store Water for Beneficial Use. 7/83. 542-3109.

Form 19: Application for Permit to Divert or Withdraw Water for Production and Processing of Sand, Gravel, or Rock Materials. 1/84. 542-3110.

Form 20: Registration of Minor Nonrecurring Use of Water. 7/84. 542-3112.

Form 542-1470: *Water Supply Section Water Use Permit Renewal.*

Form 542-1539: Application for Use of an Agricultural Drainage Well.

50.3(2) Supplementary information forms. The following forms are used to obtain additional information to supplement various types of applications:

Form 16-1: Supplement to Application for Permit to Divert, Store, or Withdraw Water for Beneficial Use. 6/85. 542-3262.

Form 17-1: Supplement to Application for a Permit to Use Water for Irrigation Use from Reservoirs. 7/83. 542-1007.

Form 17-2: Supplement to Application for a Permit to Use Water for Irrigation Use from Wells. 7/83. 542-3107.

Form 17-3: Supplement to Application for a Permit to Use Water for Irrigation Use from Streams. 7/83. 542-3108.

Form 19-1: Supplemental Data for Application for Permit to Divert or Withdraw Water for Production and Processing of Sand, Gravel, or Rock Materials. 7/83. 542-3111.

Form 21: Survey of Land Owners and Occupants. 7/83. 542-3113.

Form 22: Well Inventory Form. 7/83. 542-3114.

Form 122: Water Well Inspection Report. 3/86.

50.3(3) Reporting forms *form*. The following forms are *form is* for reporting permitted activities:

Form 23: Report of Water Use by all Regulated Users Except Irrigators and Producers of Sand, Gravel, or Rock Aggregate. 7/83. 542-3115.

Form 24: Report of Water Use for Irrigation. 12/83. 542-3116.

Form 25: Report of Water Use for Aggregate Production or Mining. 7/83. 542-3117.

Form 26: Water Permit Validation Form. 7/83. 542-1008.

Form 27: Water Level Measurement Report Form. 7/83. 542-1009.

ITEM 3. Amend subrule 50.4(1), catchwords, as follows:

50.4(1) Form of application *Application form*.

ITEM 4. Amend paragraph **50.4(1)“a”** as follows:

a. Application for approval of a new withdrawal, diversion or storage of water unrelated to the use of an agricultural drainage well. For withdrawals, diversions, or storage of water unrelated to the use of an agricultural drainage well, a request for a new permit as distinguished from modification or renewal of an existing permit shall be made on a form obtained from the department *Form 16 (542-3106)*. An application form must be submitted by or on behalf of the owner, lessee, easement holder or option holder of the area where the water is to be withdrawn, diverted or stored, and used. An application must be accompanied by a map portraying the points of withdrawal or diversion and storage, and the land on which water is to be used oriented as to section, township, and range. One application normally will be adequate for all uses on contiguous tracts of land. Tracts of land involved in the same operation separated only by roads or railroads will be deemed contiguous tracts.

ITEM 5. Amend paragraph **50.4(1)“c”** as follows:

c. Application for modification or renewal of a permit. A request for renewal of a permit ~~need not~~ *should* be submitted on an application form *Form 542-1470*. A letter identifying the permittee and permit number and requesting renewal is sufficient. To request modification of a permit, the letter must also clearly identify each modification desired and the reasons why each modification is needed. *A request to modify an existing permit shall be made on Form 16 (542-3106) and must include an explanation of the necessity for the modification.*

ITEM 6. Rescind and reserve paragraph **50.4(1)“d.”**

ITEM 7. Amend subrule 50.5(2) as follows:

50.5(2) Application to withdraw groundwater. Evaluation of the potential effects of a proposed withdrawal of groundwater requires review of available hydrogeological information to identify the additional information which the applicant is responsible for providing. *The department may require additional supporting hydrogeological information, which the applicant is responsible for providing. To the extent practical the department will screen applications for permits to withdraw groundwater by dividing them into two classes according to whether potential effects can be predicted with reasonable confidence from available information.*

ITEM 8. Amend rule 567—50.6(17A,455B), introductory paragraph, as follows:

567—50.6(17A,455B) Supporting information. Applicants shall submit supporting information which is reasonably required to assist the department in conducting the investigation of an application required by Iowa Code section sections 455B.264 and Iowa Code section 455B.281 and in determining whether granting of a permit would be consistent

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with the policies and principles of beneficial use set forth in Iowa Code section 455B.262. ~~Forms for submitting routinely required supporting information are listed in 50.3(17A, 455B). In addition, certain~~ *Certain* supporting information requirements are described in this rule. This description is intended to identify frequently required information; ~~it is not intended to be exhaustive.~~ *The department may require additional information relative to the permit application.*

ITEM 9. Amend paragraph **50.6(1)“a”** as follows:

a. Identification of source and effects of pumping. An applicant shall be required to submit information needed by the department to identify the aquifer(s) from which withdrawals of water are proposed, predict the effects of pumping with a reasonable degree of confidence, and determine any permit conditions for well interference pursuant to 567—Chapter 54. At many locations the only reliable methods to determine the availability of a water source of adequate quantity and quality and to predict the effects of pumping require test drilling, yield test pumping, and a controlled aquifer test with measurements in one or more observation wells ~~conducted under appropriate supervision with prior approval in a manner that is acceptable to the department.~~ The applicant shall be required to perform each of these exploratory operations to the extent necessary for the department to obtain information from which to determine whether a permit should be granted and to identify conditions which should be imposed in any permit granted. The following requirements apply to exploratory drilling and test pumping.

(1) Test drilling. In cases where test drilling is needed for geological information relevant to the application, the applicant is responsible for employing a driller who will collect, bag and properly label cutting samples at each five-foot interval and at each apparent change in geological formation from a test hole or production well hole at least the approximate depth of the proposed production well. The cutting samples must be saved for collection by the department in sample bags provided by the *department's Iowa geological survey (IGS) bureau of the department.* The samples shall be accompanied by a driller's log showing the location and total depth of the hole and a description of the materials encountered at successive intervals.

(2) Yield testing. An applicant shall be required to construct a well and test pump it for yield to the extent necessary to determine whether water is available at the applicant's proposed rate of withdrawal from the proposed source. A written registration from the department is required before any yield test in which more than 25,000 gallons will be withdrawn in a period of 24 hours or less (see 567—~~Chapter 51 subrule 51.6(5).~~

(3) Controlled aquifer test with supervision. An applicant shall be required to conduct a controlled aquifer test with supervision by a ~~registered certified well driller contractor, registered licensed professional engineer or other designee of the department as a condition of obtaining a water permit if the department, after consultation with the department, finds an aquifer test necessary to determine the effects which the proposed withdrawals have~~ *withdrawal has* on other water uses. The applicant may be required to construct, develop, and maintain adequate observation wells for use in an aquifer test and for subsequent water level measurements or water quality monitoring. An applicant shall be responsible for obtaining a registration for an aquifer test as provided in 567—~~Chapter 51 subrule 51.6(5).~~

ITEM 10. Amend subrule 50.6(2) as follows:

50.6(2) Application for an irrigation permit. An applicant who proposes to irrigate row crops ~~in a field on land~~ which

includes soils more erodible than Capability Subclass IIe as defined by the U.S.D.A. Soil Conservation Service (S.C.S.) *Natural Resources Conservation Service (NRCS)*, or slopes greater than 6 percent where a modern S.C.S. NRCS Soil Survey is not available, shall submit a soil conservation plan prepared with the assistance of ~~S.C.S.~~ *the NRCS* for the field land in which row-crop irrigation is proposed. The plan shall be accompanied by the applicant's written explanation of how operation of the proposed irrigation system will be compatible with the conservation plan. ~~However, the department may waive the requirement of a formal soil conservation plan if the erodible area of the field is small and the potential for violation of soil loss limits established by the soil conservation district is minimal.~~

ITEM 11. Amend subrule 50.6(3) as follows:

50.6(3) Application for permit to dewater a rock quarry. Iowa Code section 455B.268 and 567—Chapter 51 require that a permit be obtained before diverting water or material from the surface directly into any underground watercourse or basin. When the department investigates an application for a permit to pump water for dewatering of a quarry excavated in carbonate rock, the department shall consider the potential for pollution of an underground watercourse or basin from drainage of surface water into the quarry. If available information, including topographic and subsurface geological information, ~~support supports~~ a finding that drainage of surface water into the quarry would constitute a violation of the permit requirement in Iowa Code section 455B.268 and might cause pollution of an underground watercourse or basin if not controlled, then the department shall require that the applicant either request a permit to authorize a drainage of surface water into the quarry, or construct and maintain a means of controlling surface water which would otherwise drain into the quarry. Examples of suitable methods of controlling surface drainage are low berms or artificial drainage ways constructed as needed to reduce runoff of surface water from adjacent land into the quarry. ~~If a rock quarry site is located on a flood plain, the surface runoff control plan will be reviewed by the flood plain branch to ensure that diversion structures do not adversely affect the efficiency or unduly restrict the capacity of the floodway of the adjacent stream or otherwise violate the statutory criteria contained in Iowa Code sections 455B.264 and 455B.275.~~

ITEM 12. Amend subrule 50.6(4) as follows:

50.6(4) Application for permit to divert water into an aquifer not related to the use of an agricultural drainage well. An applicant for a permit to divert water or any other material from the surface into an aquifer not related to the use of an agricultural drainage well shall submit information showing that the requested diversion will not ~~pollute~~ *alter the quality* of the aquifer.

ITEM 13. Rescind and reserve subrule **50.6(5)**.ITEM 14. Amend paragraph **50.7(3)“a”** as follows:

a. New permits and modifications of permits.

(1) *Applicable to all except community public water supplies.* Before issuance of a permit to withdraw, divert or inject water, the department shall publish notice of recommendation to grant a permit. The notice shall summarize the application and the recommendations in the summary report. The notice shall allow 20 days to request a copy of the summary report and submit comments on the report. The department may extend the comment period upon request for good cause ~~shown.~~ The notice shall be published in a newspaper circulated in the locality of the proposed water source. The notice shall be sent by ~~ordinary mail, first class,~~ to any person

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who has requested to be placed on mailing list in 567—Chapter 4 to receive notices of recommendation to grant permits within specified counties, and to any person who has requested a copy of the notice concerning the particular water use under consideration.

(2) *Applicable only to community public water supplies. Prior to the issuance of a permit to withdraw, divert or inject water to a community public water supply, the department shall publish a notice of recommendation to grant a permit. The notice shall allow 20 days to request a copy of the summary report and submit comments on the report. The department may extend the comment period upon request for good cause. The notice shall include a brief summary of the proposed permit and shall be published in a newspaper of general circulation within the county of the proposed water source as provided in Iowa Code section 618.3. If the newspaper of general circulation is not the newspaper of the nearest locality to the proposed water source that publishes a newspaper, the notice shall also be published in the newspaper of the nearest locality to the proposed water source that publishes a newspaper, and the department may charge the applicant for the expenses associated with publishing the notice in the second newspaper. The notice shall be sent to any person who has requested a copy of the notice concerning the particular water use under consideration.*

ITEM 15. Rescind and reserve subrule **50.7(5)**.

ITEM 16. Amend rule 567—50.8(17A,455B) as follows:

567—50.8(17A,455B) Initial decision by the department.

50.8(1) Form of decision. The initial decision on an application shall be a permit or disapproval order issued by the department. Each permit shall include appropriate standard and special conditions consistent with Iowa Code sections 455B.261 to 455B.274, Iowa Code section and 455B.281 and 567—Chapters 52 to 54. The decision may incorporate by reference and attachment the summary report described in 50.7(2). Each decision shall include the following:

a. Determinations as to whether the project satisfies all relevant criteria not addressed in an attached summary report.

b. An explanation of the purpose for imposing each special condition.

c. Explanation of consideration given to all comments submitted pursuant to 50.7(3) and 50.7(4) unless the comments are adequately addressed in the attached summary report.

50.8(2) Notice of initial decision. Copies of the initial decision shall be mailed to the applicant, any person who commented pursuant to 50.7(3), and any other person who has requested a copy of the decision. The decision may be sent by ordinary mail, first class, and shall be accompanied by a certification of the date of mailing. An initial decision becomes the final decision of the department unless a timely notice of appeal is filed in accordance with 50.9(17A,455B). The final decision may be filed with the appropriate county recorder to give constructive notice to future landowners of any conditions or requirements imposed by the final decision.

ITEM 17. Amend **567—Chapter 50**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 17A.3, 159.29, 455B.105, 455B.171, 455B.262, 455B.264 to 455B.274, 455B.278, and 455B.281 and chapter 460.

ITEM 18. Amend rule 567—51.2(455B) as follows:

567—51.2(455B) Storage (surface). A permit shall be required for the storage of 18 acre-feet or more of water in permanent storage. No such storage permit shall be granted by the department prior to issuance of a department order flood plain permit, if applicable, approving the plans and specifications for the impounding structure. No water storage permit from the department shall be required for waste stabilization lagoons, waste storage basins, or similar structures which are used solely for wastewater treatment or disposal. A storage permit is required either for a stormwater retention basin or for an open feedlot lagoon under the influence of natural runoff that exceeds the storage permit threshold of 18 acre-feet. A permit authorizing withdrawals of water from an artificial reservoir formed by an officially designated grade stabilization structure which was constructed with federal, state, or local cost-sharing funds shall not be granted unless the person applying for such a permit provides written approval for such withdrawals from the soil and water conservation district in which the structure is located.

ITEM 19. Amend rule 567—51.5(455B) as follows:

567—51.5(455B) Closed cooling Cooling/heating systems. A permit shall not be granted for the withdrawal of groundwater for use solely as a coolant in a closed system without returning such groundwater to the aquifer from which it came unless applicant demonstrates compelling reasons for not returning the water. A permit for the withdrawal of groundwater for use as a heat exchange media in a heating/cooling system may be granted, allowing such groundwater to be discharged into sanitary or storm sewers (when the use is complete). However, a permittee that has such a system shall make plan and design provisions to the permittee's system to allow the groundwater to be returned directly (i.e., re-injected) to the aquifer from which it was originally pumped. The department reserves the right to order such direct return as part of its water conservation plan responsibility as described in 567—subrule 52.9(3) (chiefly incorporating mandated emergency conservation measures), and its priority allocation plan responsibility as described in 567—subrule 52.10(3).

ITEM 20. Rescind rule 567—51.6(455B) and adopt the following **new** rule in lieu thereof:

567—51.6(455B) Miscellaneous uses. Unless otherwise provided herein, a permit shall be required for the use of more than 25,000 gallons of water per day for any purpose.

51.6(1) Reserved.

51.6(2) Drainage at construction sites. A permittee may obtain permit coverage through registration as described in 51.6(5) for the withdrawal of water to lower the water table as necessary at a construction site.

51.6(3) Test pumping. The department may authorize by registration, as described in 51.6(5), test pumping of sources of water to determine adequacy of the source and effects of such withdrawals. The department may require the applicant to conduct the test pumping under the supervision of or acquire technical assistance from the department's Iowa geological survey (IGS) or its designee. No such registration for test pumping shall be for a period of more than one year. A registration must be obtained from the department for any pumping test in which more than 25,000 gallons of water will be withdrawn in a period of 24 hours or less.

51.6(4) Rural water districts. A permit shall be required for withdrawal of water by any rural water district having its own source of water, and such a withdrawal shall be classified as a use by community public water supply.

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51.6(5) Permit registration for minor, nonrecurring uses. Any use of water which is a minor, nonrecurring use, including but not limited to highway construction and maintenance, charging of lagoons, drilling wells, and hydrostatic testing of pipelines, shall require permit coverage that may be obtained through registration. The permit applicant may register minor, nonrecurring water use by submitting Form 20 (542-3112). Such registration shall be for up to one year. After an investigation of any withdrawal allegedly causing material damage, the department shall require prompt, appropriate action for the alleviation of damages. Where agreement cannot be reached on the action necessary for the alleviation of damages, withdrawal of water shall cease immediately upon notification by the department and an application for a permit shall be submitted.

51.6(6) Research contracts. The withdrawal of water for research purposes by the department's IGS through its agents, employees, or contractees may be authorized by registration under 51.6(5) and may be subject to conditions set by the department.

ITEM 21. Amend rule 567—51.7(455B) as follows:

567—51.7(455B) Excavation and processing of rock and gravel products. A water permit is required for withdrawal of more than 25,000 gallons of surface water or groundwater in one day for dewatering, washing, ~~plugging~~ *pugging*, or use of a hydraulic dredge in connection with removal or processing of rock or gravel products. This permit requirement is subject to the following exceptions:

1. A permit is not required for operation of a hydraulic dredge which returns all water used as a transport medium directly back into the pit from which it is withdrawn by the dredge;

2. A permit is not required for withdrawal of water from a gravel pit or rock quarry sump pit for material washing if the wash water is discharged directly back into the pit from which it is withdrawn.

ITEM 22. Amend rule 567—51.8(455B) as follows:

567—51.8(159) Agricultural drainage wells. All agricultural drainage wells must be registered by the owner with the department by September 30, 1988, on the form provided by the department. Registration of an agricultural drainage well is not considered a permit as required under rule 51.3(455B) or subrule 51.6(5).

ITEM 23. Amend **567—Chapter 51**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 459.29, 455B.262, 455B.264 to 455B.274, and 455B.278; and ~~455E.11~~ *chapter 460*.

ITEM 24. Amend rule 567—52.1(455B) as follows:

567—52.1(455B) Scope of chapter. This chapter contains criteria for issuance of water permits, permit conditions, and conditions under which the department may modify, cancel, or suspend permits. This chapter includes special criteria applicable to particular types of water uses such as irrigation, and criteria applicable to particular types of sources of water such as ~~streams~~ *surface waters* and groundwater sources.

ITEM 25. Amend subrule 52.2(1) as follows:

52.2(1) Irrigation permits.

a. Authorized irrigation season. Permits shall authorize irrigation of *any* general farm crops crop ~~such as row crops, small grain and hay~~ from April 1 to September 30 and *any* specialty crops crop ~~such as vegetables, fruits, and sod~~ from

April 1 to October 31 unless the department finds that a different period is justified.

b. Authorized annual amount. Permits shall authorize withdrawals equivalent to ~~12 acre-inches~~ *1 acre-foot* per acre for a general farm crops crop and ~~24 acre-inches~~ *2 acre-feet* per acre for a specialty crops crop unless the department finds that a different amount is justified. Factors to be considered in determining whether a different amount is justified include soil types and potential water availability during drought events. Notwithstanding the general criteria in this paragraph, permits for irrigation of general farm crops from the alluvial aquifers of the Missouri and Mississippi Rivers shall authorize withdrawals of up to ~~18 acre-inches~~ *1.5 acre-feet* per acre if requested by the applicant unless the department finds that a different amount is justified.

c. Conservation plan for erosion control. When 567—subrule 50.6(2) requires that an applicant for an irrigation permit submit a soil conservation plan, any permit granted to the applicant shall make authorization of irrigation contingent upon the permittee's compliance with the soil conservation plan.

d. Irrigation scheduling. The department may require that irrigation of a general farm crops crop be scheduled according to a method recommended by the department to minimize the potential for waste of water or by an equivalent method selected by the permittee and approved by the department.

e. Irrigation system check valve. Each irrigation permit shall require the permittee to ~~submit documentation that an adequate check valve has been installed~~ *install an adequate check valve and conduct frequent inspections for the proper functioning of the check valve* to prevent back-siphoning of contaminants into the water source before a fertilizer, pesticide, herbicide, or other additive is introduced into the irrigation system.

ITEM 26. Amend paragraph **52.2(4)“b”** as follows:

b. Watering system backflow-prevention valve. Each permit authorizing the use of water for turf or landscape plantings shall require the permittee to ~~submit documentation that an adequate check valve has been installed~~ *install an adequate check valve and conduct frequent inspections for the proper functioning of the check valve* to prevent back-siphoning of contaminants into the water source before a fertilizer, pesticide, herbicide or other additive is introduced into the irrigation system.

ITEM 27. Amend paragraphs **52.3(1)“a”** and **52.3(1)“b”** as follows:

a. Two hundred gallon per minute (200 gpm) restriction. New withdrawals of water for consumptive uses shall not be in excess of 200 gallons per minute (200 gpm) *on an aggregate basis*. ~~Permits in effect on July 5, 1978, that authorize withdrawals in excess of 200 gallons per minute (200 gpm) for consumptive uses, upon renewal, shall not authorize withdrawals in excess of 200 gallons per minute (200 gpm) after December 31, 1988.~~ However, the department may authorize withdrawals in excess of 200 gallons per minute (200 gpm) for storage purposes during high stream flows, *taking into account other permitted withdrawals on the stream reach*.

b. Protected flow restriction. Except as provided in 52.3(1)“c,” withdrawals for consumptive uses, *with the exception of community public water supplies*, shall cease when the stream flow is below the protected flow designated in rule 52.8(455B). When the flow of a stream, or portion thereof designated by the department, is below a flow equal to the

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protected flow plus the summation of all permitted consumptive withdrawals by permittees whose permits provide for maintenance of a protected flow in such stream or portion thereof, the department may, subject to the provisions of 52.3(1)“c,” order temporary cessation or rotation of all consumptive withdrawals, *with the exception of community public water supplies*, to ensure that the protected flow is preserved.

ITEM 28. Rescind and reserve paragraph **52.3(1)“d.”**

ITEM 29. Amend paragraph **52.3(2)“a”** as follows:

a. Protected flow restriction. Except as provided in 52.3(2)“b,” ~~to 52.3(2)“d,”~~ withdrawals for consumptive uses, *with the exception of community public water supplies*, shall cease when the stream flow is below the protected flow designated in rule 52.8(455B). When the flow of a stream, or portion thereof designated by the department, is below a flow equal to the protected flow plus the summation of all permitted consumptive withdrawals by permittees whose permits provide for maintenance of a protected flow in said stream or portion thereof, the department may, subject to the provisions of 52.3(2)“b,” ~~to 52.3(2)“d,”~~ order temporary cessation or rotation of all consumptive withdrawals, *with the exception of community public water supplies*, to ensure that the protected flow is preserved.

ITEM 30. Rescind and reserve paragraphs **52.3(2)“c”** through **52.3(2)“e.”**

ITEM 31. Amend subrule 52.4(1) as follows:

52.4(1) Withdrawals from ~~unconsolidated unconfined~~ aquifers adjacent to streams draining less than 50 square miles. Withdrawals of water from ~~unconsolidated unconfined~~ aquifers adjacent to streams draining less than 50 square miles shall be subject to the following conditions:

a. Two hundred gallon per minute (200 gpm) restriction. New withdrawals for a consumptive use at any location within ¼ mile (1320 feet) of a stream shall not be in excess of 200 gallons per minute (200 gpm), except when the applicant can conclusively demonstrate by conducting appropriate tests that withdrawals in excess of 200 gallons per minute (200 gpm) will not reduce the flow of the stream. ~~Permits in effect on July 5, 1978, that authorize withdrawals in excess of 200 gallons per minute (200 gpm) for consumptive uses at such locations, upon renewal, shall not authorize withdrawals in excess of 200 gallons per minute (200 gpm) after December 31, 1988. However, the department may authorize withdrawals in excess of 200 gallons per minute (200 gpm) for storage purposes during high stream flows.~~

b. Protected flow restriction. Except as provided in 52.4(1)“c” and 52.4(1)“e,” withdrawals for consumptive uses, *with the exception of community public water supplies*, at any point within 1/8 mile (660 feet) of a stream shall be considered withdrawals from the stream and shall cease when the stream is below the protected flow designated in rule 52.8(455B), unless the applicant or permittee can conclusively demonstrate by conducting appropriate tests that the withdrawal will not reduce the flow of the stream. ~~This protected flow restriction shall not apply until January 1, 1989, to withdrawals pursuant to a permit that was in effect on July 5, 1978, and authorized withdrawals for a consumptive use without a condition as of July 5, 1978, for maintenance of a protected flow. Withdrawals pursuant to the renewal of any such permit shall be likewise exempted.~~

c. Border stream-interior stream confluence restriction. Withdrawals for consumptive uses, *with the exception of community public water supplies*, from the alluvial aquifers

below the floodplains of streams bordering the state at any point within 1/8 mile (660 feet) of any interior stream, shall cease when the flow of such interior stream is at or below the seven-day, one-in-ten-year (7Q10) low flow, except as provided in 52.4(1)“d.”

d. Other conditions. Notwithstanding 52.4(1)“a” to 52.4(1)“c,” other conditions may be imposed that are necessary to ensure adequate protection of water supplies for ordinary household, livestock, and domestic uses, for fish and wildlife, for recreational use, for the preservation and enhancement of aesthetic values, and for other uses of a public nature.

e. Replacement water exemption. ~~Rules Paragraphs 52.4(1)“a” to 52.4(1)“c” shall not apply to withdrawals for consumptive uses from an unconsolidated unconfined aquifer if the permittee discharges replacement water into such stream or tributary thereto at rates sufficient to offset the consumptive withdrawals and the department approves the method and location of discharge.~~

~~f. Exemption until July 1, 1991, for certain users. Paragraphs 52.4(1)“a,” “b” and “c” shall not apply until July 1, 1991, to uses that were nonregulated prior to July 1, 1985, provided the application for said permit is postmarked or received prior to July 2, 1986.~~

ITEM 32. Amend subrule 52.4(2) as follows:

52.4(2) Withdrawals from ~~unconsolidated unconfined~~ aquifers adjacent to streams draining 50 or more square miles. Withdrawals of water from ~~unconsolidated unconfined~~ aquifers adjacent to streams draining 50 or more square miles shall be subject to the following conditions:

a. Protected flow restriction. Withdrawals for consumptive uses, *with the exception of community public water supplies*, at any point within 1/8 mile (660 feet) of a stream shall be considered withdrawals from the stream and shall cease when the stream is below the protected flow designated in rule 52.8(455B), except as provided in 52.4(2)“c” to 52.4(2)“f.”

b. Seven-day, one-in-ten-year low flow restriction. Withdrawals for consumptive uses, *with the exception of community public water supplies*, at any point located between 1/8 mile (660 feet) and ¼ mile (1320 feet) of a stream, other than a stream bordering the state, shall cease when the stream flow is at or below the seven-day, one-in-ten-year low flow (7Q10 flow), except as provided in 52.4(2)“c” to 52.4(2)“f.”

c. Border stream-interior stream confluence restriction. Withdrawals for consumptive uses, *with the exception of community public water supplies*, from the alluvial aquifers below the floodplains of streams bordering the state at any point within 1/8 mile (660 feet) of any interior stream shall cease when the flow of such interior stream is at or below the seven-day, one-in-ten-year (7Q10) low flow, except as provided in 52.4(2)“d.”

d. Other conditions. Notwithstanding 52.4(2)“a” to 52.4(2)“c,” other conditions may be imposed if they are necessary to ensure adequate protection of water supplies for ordinary household, livestock, and domestic uses, for fish and wildlife, for recreational use, for the preservation and the enhancement of aesthetic values, and for other uses of a public nature.

e. Replacement water exemption. Paragraphs 52.4(2)“a” to 52.4(2)“c” shall not apply to withdrawals for consumptive uses from an ~~unconsolidated unconfined~~ aquifer, if the permittee discharges replacement water into such stream or tributary thereto at rates sufficient to offset the con-

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sumptive withdrawals and the department approves the method and location of discharge.

f. Exemptions from low flow restrictions. The restrictions of 52.4(2)“a” to 52.4(2)“d” may be waived if the applicant or permittee can conclusively demonstrate by conducting appropriate tests to demonstrate that the withdrawal will not reduce the flow of the adjacent stream. *The plan for testing must be approved by the department prior to the applicant's or permittee's conducting the tests.* ~~Withdrawals pursuant to a permit, which was in effect on July 5, 1978, and authorized withdrawals for a consumptive use without a condition as of July 5, 1978, for maintenance of the protected flow, and withdrawals pursuant to the renewals of such permit shall be exempt from paragraphs 52.4(2)“a” to 52.4(2)“d” under the conditions for exemption specified in 52.3(2)“c” and 52.3(2)“d.” Withdrawals eligible for the exemptions of 52.3(2)“c” and 52.3(2)“d,” if shifted from a stream to an adjacent unconsolidated aquifer, shall not lose the exemptions granted under the conditions of 52.3(2)“c” and 52.3(2)“d.”~~

g. ~~Exemption until July 1, 1991, for certain users. Paragraphs 52.4(2)“a,” “b” and “c” shall not apply until July 1, 1991, to uses that were nonregulated prior to July 1, 1985, provided the application for said permit is postmarked or received prior to July 2, 1986.~~

ITEM 33. Amend subrule 52.4(3) as follows:

52.4(3) Withdrawals from the *Cambrian Jordan Sandstone Aquifer*. Withdrawals of water from the *Cambrian Jordan Sandstone Aquifer* including the *Prairie Du Chien* formation and the *St. Lawrence* formation shall be subject to the following conditions:

a. Two hundred gallon per minute (200 gpm) restriction on irrigation use and recreational and aesthetic use. New withdrawals of water for irrigation and recreational and aesthetic uses shall not be in excess of 200 gallons per minute (200 gpm). Existing permits for irrigation and recreational and aesthetic uses that authorize withdrawal rates in excess of 200 gallons per minute (200 gpm) ~~shall not be renewed~~ *may be modified by the department if, according to the department, serious impact on other water withdrawals or on groundwater piezometric levels occur or are forecasted to occur.* ~~any well in the vicinity experiences loss of water due to drawdown effects or the piezometric level is reduced significantly.~~

b. Two thousand gallon per minute (2000 gpm) restriction on industrial use and power generation use. New withdrawals of water for industrial and power generation uses at one plant location shall not exceed 2,000 gallons per minute (2000 gpm).

c. Two hundred (200) foot limit on the decline of groundwater piezometric levels. The maximum collective long-term decline in groundwater piezometric levels in the *Cambrian Jordan Sandstone Aquifer* in any high use area will not be permitted to exceed 200 feet from the 1977 baseline as determined from available records of the *department's Iowa geological bureau survey (IGS)*.

d. Variances. Variances from the restrictions imposed by subrule 52.3(3) *these rules* will be considered by the department through the appeal procedures in ~~567—Chapter 7~~ *561—Chapter 10*.

ITEM 34. Amend subrule 52.4(4) as follows:

52.4(4) Withdrawals from the *Dakota Sandstone* formation of the Cretaceous system. The department may issue permits authorizing withdrawals of water from the *Dakota*

Sandstone formation of the Cretaceous system for all beneficial uses under the following conditions:

a. Inventory of nearby wells by applicant. An applicant who requests authorization for withdrawals of water at a maximum rate in excess of 200 gallons per minute shall conduct and submit an inventory of nearby wells as described in 567—paragraph 50.6(1)“b.”

b. Observation wells. In addition to the requirement of 52.6(3) for construction of an access port to allow measurement of water levels in each production well, an applicant or permittee may also be required to construct, maintain, and monitor observation wells as a condition of obtaining or keeping a water permit if the department, after consultation with the geological survey bureau *department's IGS*, finds observation wells necessary to monitor the effects of the proposed or authorized withdrawals of water. Observation wells must be properly constructed and developed to respond *responsive* to water level fluctuations in the aquifer. *Plans for and monitoring of the observation wells must be approved by the department.*

c. Prohibition of excessive water level declines. If the department, after consultation with the geological survey bureau *department's IGS*, determines that withdrawals of water from the *Dakota Sandstone* formation of the Cretaceous system within a designated geographical area are causing water level declines which constitute a significant threat to the public interest in the availability of water for sustained beneficial use of the aquifer, renewals of permits shall be denied, and permits shall be modified or canceled in accordance with procedures in Iowa Code section 455B.271, as necessary to protect the aquifer for sustained use.

d. Priorities in renewal, modification and cancellation of permits. If permit renewals must be denied or if permits must be modified or canceled to prevent or abate water level declines which constitute a significant threat to the public interest in the availability of water for sustained beneficial use of the aquifer, withdrawals of water for community public water supplies and for agricultural research shall have priority over withdrawals of water for other regulated uses. *The priority list for water use can be found in 52.10(3).*

ITEM 35. Amend subrule 52.6(1) as follows:

52.6(1) Water use reports. Each permittee shall submit to the department, *at least annually, as prescribed by the department*, reports of water used, diverted, or stored and any other information deemed necessary by the department.

ITEM 36. Amend subrule 52.6(4) as follows:

52.6(4) Aquifer tests and observation wells. A permittee may be required to conduct a controlled aquifer test as a condition of keeping a water permit if the department, after consultation with the geological survey bureau *department's IGS*, finds an aquifer test to be necessary to determine the effects which the authorized withdrawals have on other water uses. A controlled aquifer test, authorized by the department and supervised by a ~~registered well driller~~ *certified well contractor, registered licensed professional engineer* or other designee of the department, may be required for an administrative resolution of a well interference conflict pursuant to 567—Chapter 54. The permittee may be required to construct, develop, and maintain adequate observation wells for use in an aquifer test and for subsequent water level measurements or water quality monitoring.

ITEM 37. Amend subrule 52.7(1) as follows:

52.7(1) General. Except as provided in subrule 52.7(2), after at least 30 days' written notice mailed to the permittee's last-known address by ~~restricted certified mail or personal~~

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service, and an opportunity for the permittee to be heard in an evidentiary hearing conducted according to the contested case provisions of Iowa Code chapter 17A, the department may modify or cancel a water permit or any condition of a permit, notwithstanding any other rule, for any of the following:

- a. Breach of permit condition or law. A condition of the permit has been breached or the law pertaining to the permit has been violated by the permittee or permittee's agent, *tenant, or consultant*.
- b. Nonuse. The permittee has failed for three consecutive years to use the water, and the permittee has not demonstrated adequate plans to use water within a reasonable time. Nonuse due to adequate rainfall shall not be a justification for cancellation of a permit. However, authorization to withdraw water from a proposed well may be canceled after notice to the permittee if the permittee has failed to construct the proposed well within three years after issuance of the permit.
- c. Public health and safety. Modification or cancellation is necessary to protect the public health and safety, to protect the public interests in lands and waters, or to prevent any manner of substantial injury to persons or property.
- d. Addition of conservation provisions. Modification to include conservation provisions is deemed necessary by the department.
- e. *Allocated amount. For three consecutive years, annual water use has exceeded the amount of water allocated in the permit.*

ITEM 38. Amend rule **567—52.7(455B)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 455B.271, 455B.272 and 47A.18(3) 17A.3.

ITEM 39. Amend subrule 52.8(2) as follows:

52.8(2) Protected flow basis. The protected flow is based in part on statistical information contained in "Low-Flow Characteristics of Iowa Streams," (INRC Bulletin No. 9 (1958)), "Low-Flow Characteristics of Iowa Streams through 1966," (INRC Bulletin No. 10 (1970)), and "Annual and Seasonal Low-Flow Characteristics of Iowa Streams," (INRC Bulletin No. 13 (1976)), and "Statistical Summaries of Selected Iowa Streamflow Data Through September 1996, U.S. Geological Survey Open-File Report 98-176 (1998)."

ITEM 40. Rescind the following six entries from the table entitled "The Protected Flow at U.S.G.S. Stream Gaging Locations" in subrule **52.8(3)**:

River or Stream	Gage Location	Protected Low Flow (CFS)
Des Moines River	Estherville	22
East Branch Iowa River	Klemme	6
Lizard Creek	Clare	4.2
Shell Rock River	Northwood	23
Tarkio River	Stanton	0.3
West Branch Floyd River	Struble	0.85

ITEM 41. Amend subrule **52.9(1)**, first unnumbered paragraph, as follows:

Each permit granted after July 1, 1986, *including any permit granted to a community public water supply*, will include conditions requiring routine (day-to-day) conservation practices, and requiring emergency conservation practices after notification by the department. Existing permits may be modified to include conservation conditions pursuant to 52.7(1)"d," if deemed necessary by the department.

ITEM 42. Amend subrule 52.9(2) as follows:

52.9(2) Applicability of emergency conservation. Specific emergency conservation requirements may be made a condition of a water withdrawal permit if the proposed or permitted withdrawal could result in a significant consumptive use of water from a source which is likely to experience a short-term shortage.

~~A determination of the consumptive nature of a water use will be based on the hydrologic relationship of the sources of water withdrawal and wastewater discharge. If the source of withdrawal and discharge are the same, the consumptive use from the source will be considered to be the amount of water withdrawal minus the wastewater discharge. If the sources of withdrawal and discharge are hydrologically independent, then consumptive use from the source of withdrawal will be considered to be the total amount of withdrawal. Water sources which are in close hydrologic connection (e.g., an alluvial aquifer and adjacent stream) will be considered as the same source.~~

Specific emergency conservation requirements will not normally be included in a water use permit under any of the following conditions:

- a. to f. No change.

ITEM 43. Amend paragraph **52.9(3)"b"** as follows:

b. Routine conservation provisions. Consideration of routine conservation is encouraged although it is not normally required in a water conservation plan. Documented water savings from routine conservation measures will be credited towards emergency conservation requirements. Suggested routine conservation measures include:

- (1) Use of water-saving plumbing devices or required use of these devices in building codes.
- (2) Scheduling irrigation to minimize peak water use.
- (3) Use of efficient irrigation techniques.
- (4) Implementing programs to minimize lost water, such as ~~as piping~~ *distribution system* leaks.
- (5) Use of metered water billing by public water supplies.
- (6) Utilizing best commercially available technology to optimize efficiency of water use.
- (7) Implementing recycling and reuse practices.
- (8) Developing alternative water sources which are not susceptible *or are less susceptible* to shortages.
- (9) Increasing rates charged for water or eliminating reduced rates for large users.

ITEM 44. Amend subparagraph **52.9(3)"c"(3)** as follows:

(3) Irrigation water use. Emergency water conservation plans for irrigation water uses shall limit irrigation water use to the equivalent of one inch per irrigated acre per week for general ~~farm~~ crops and specialty crops, unless the water conservation plan contains other mitigating provisions such as *those listed in 52.9(3)"c"(1) above.*

Water conservation plans shall also address irrigation scheduling. Irrigation scheduling should attempt to provide approximately equal water use on each day of an irrigation cycle. Irrigation scheduling may be done in cooperation with other nearby irrigators who utilize the same water source.

ITEM 45. Amend paragraph **52.10(2)"c"** as follows:

c. Determination by the department in conjunction with the ~~office of disaster services homeland security and emergency management division of the Iowa department of public defense~~ of a local crisis which affects availability of water.

ITEM 46. Amend paragraph **52.10(2)"d"** as follows:

d. Receipt of information from a state or federal natural resource, research or climatological agency (*including the*

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National Drought Monitor) indicating that a drought of local or state magnitude is imminent. As a general guideline, emergency conservation or priority allocation restrictions will not be imposed on withdrawals from a surface stream or adjacent alluvial aquifer when stream flow is above the seven-day, one-in-ten-year low-flow level.

ITEM 47. Amend paragraph **52.10(3)“c”** as follows:

c. Uses of water for the irrigation of ~~hay, corn, soybeans, oats, grain sorghum or wheat~~ *any general crop*.

ITEM 48. Amend paragraph **52.10(3)“d”** as follows:

d. Uses of water for the irrigation of ~~crops other than hay, corn, soybeans, oats, grain sorghum or wheat~~ *any specialty crop*.

ITEM 49. Amend rule 567—52.11(455B) as follows:

567—52.11(455B) Plugging of abandoned wells. When authorization for withdrawals of water from a well expires without renewal, the permittee shall be responsible for plugging the well in accordance with *Iowa Code section 455B.190, 567—Chapter 39, and Iowa Geological Survey Public Information Circular #1, “Well Plugging Procedures,”* or by an alternate method approved by the department for prevention of groundwater pollution. *Form 542-1226 (Abandoned Water Well Plugging Record) must be completed and submitted as specified on the form.* However, the department shall grant a variance from the requirement that the well be plugged if the permittee demonstrates an intent to maintain the well as a source of water for a nonregulated use or if the department determines that the well should be maintained as an observation well.

This rule is intended to implement Iowa Code sections 455B.262 and ~~455B.263~~ to 455B.279(2).

ITEM 50. Amend rule 567—53.2(455B) as follows:

567—53.2(455B) Designation of protected sources. The department, after consultation with the *department’s Iowa geological survey (IGS) bureau of the department* and other authorities, may designate a surface water or groundwater source within a defined geographical area as a protected source.

Notwithstanding rules 567—53.3(455B) to 567—53.7(455B), the department may impose permit conditions on a case-by-case basis as it determines are necessary to protect water resources of the state.

ITEM 51. Amend rule 567—53.4(455B), introductory paragraph, as follows:

567—53.4(455B) Designation procedure. The procedure for designation of a protected source shall be a rule-making proceeding to amend the list of protected sources in rule 53.7(455B). In addition to the requirements of ~~567—subrule 5.2(2) rule 561—5.1(17A), as adopted by reference in 567—Chapter 5,~~ an interested person who petitions the department to designate a protected water source may also be required to provide further supporting information including, but not limited to:

ITEM 52. Amend subrule 53.7(1) as follows:

53.7(1) Ralston Site, Linn County. The area within a one-mile radius of a point which is 600 feet south of the midpoint of the northern edge of Section 2, Township 83 North, Range 7 West in Linn County is a protected water source. Any new application for a permit to withdraw groundwater or to increase an existing permitted withdrawal of groundwater from within the protected water source area will be restricted or denied, if necessary to preserve public health and

welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Ralston Site is identified in the Registry of Hazardous Waste or Hazardous Substance Disposal Sites pursuant to Iowa Code section 455B.426.

Withdrawal of groundwater from within the protected water source area may also be restricted or denied from what would otherwise be nonregulated wells, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Linn County health department will refer any application for a construction permit for a private well within the protected water source area to the department’s water supply section ~~who~~ that will, after consultation with the department’s ~~geological survey bureau IGS,~~ determine whether the proposed well will be allowed.

ITEM 53. Amend paragraph **54.7(2)“a”** as follows:

a. Written comments by a ~~registered certified well driller contractor or registered licensed professional engineer~~ detailing well improvements needed in order to provide the complainant with a sufficient water supply.

ITEM 54. Amend paragraph **54.7(2)“b”** as follows:

b. Itemized costs of the improvements by a ~~registered certified well driller contractor~~ with a breakdown of costs eligible for compensation (see subrule 54.7(3) and guidelines in Bulletin No. 23).

ITEM 55. Amend subrule 54.7(4) as follows:

54.7(4) Complainant’s response to the offer. The complainant shall respond in writing to the department within 15 days of receipt of the offer. The response shall indicate acceptance or rejection of the offer. If the offer is rejected, the complainant shall submit a counteroffer with the response. The counteroffer shall contain supporting information including an itemized cost estimate of needed improvements by a ~~registered certified well driller contractor or registered licensed professional engineer,~~ if appropriate.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These amendments add a self-directed service alternative, called the “consumer choices option,” to six Medicaid home- and community-based services waivers: the ill and handicapped waiver, the elderly waiver, the mental retardation waiver, the AIDS/HIV waiver, the brain injury waiver, and the physical disability waiver. The amendments define the

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services and necessary components of the consumer choices option, as well as provider qualifications, provider rates, and consumer eligibility.

Under the consumer choices option, a waiver consumer may “cash out” the value of certain services in the consumer’s individual service plan. These services may include assistive devices, chore service, consumer-directed attendant care (unskilled), day habilitation, home and vehicle modification, home-delivered meals, homemaker service, prevocational services, basic individual respite care, senior companion, specialized medical equipment, supported community living, supported employment, and transportation, as applicable to the particular waiver.

The amount expected to be spent on these services becomes an “individual budget” for the consumer. Instead of receiving waiver services from enrolled Medicaid providers that are subject to Medicaid certification and billing procedures, the consumer may use the funds in the individual budget independently to hire people to provide self-directed personal care services or self-directed community supports and employment and to purchase services, equipment, or supplies that are not otherwise provided through the Medicaid program. Consumers may not use the individual budget to purchase room and board, sheltered workshop services, child care, or personal entertainment items.

The consumer must choose an independent support broker to help plan and carry out the consumer’s individual budget for services. The funds allocated to the individual budget are transferred to a financial management service, which is responsible for paying for the goods and services the consumer purchases. The financial management service is responsible for accounting and for employer-related duties such as withholding taxes, issuing paychecks, and verifying that wages comply with federal and state labor rules. The costs of the independent support broker and the financial management service come from the consumer’s individual service budget.

Only the financial management service is an enrolled Medicaid provider and receives funds through the Iowa Medicaid Enterprise. All of the other providers are employed by the consumer and are paid through the financial management service. Grants for start-up costs for financial management services will be available for a limited period through funds from the Robert Wood Johnson Foundation.

These amendments also include technical changes to:

- Replace references to the Iowa Foundation for Medical Care with references to the Iowa Medicaid Enterprise Medical Services Unit, to conform to the current organization of the Department.
- Replace references to the Long-Term Care Coordinating Unit in the Department of Elder Affairs with references to the Senior Living Coordinating Unit, to conform to statutory changes.
- Replace references to Department “regional administrators” with references to “service area managers.”

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before April 7, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

Interested persons may also present their views either

orally or in writing at the public hearings listed below. Any person who intends to attend a public hearing and requires special accommodations for specific needs such as those related to hearing or mobility impairments should contact the Office of Policy Analysis at (515)281-2440.

Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa	Wednesday, April 5, 2006 9 to 10 a.m.
Conference Room 3 Wapello County Department of Human Services 120 E. Main St. Ottumwa, Iowa	Wednesday, April 5, 2006 9:30 to 11 a.m.
Sixth Floor Conference Room 605 A & B Scott County Administrative Center 428 Western Ave. Davenport, Iowa	Wednesday, April 5, 2006 10 to 11 a.m.
Conference Room A Trosper-Hoyt Building 822 Douglas St. Sioux City, Iowa	Wednesday, April 5, 2006 10 to 11 a.m.
ICN Room Pottawattamie County DHS Office 417 E. Kanesville Blvd. Council Bluffs, Iowa	Wednesday, April 5, 2006 1 to 2 p.m.
Fifth Floor ICN Room Iowa Building 411 Third St. SE Cedar Rapids, Iowa	Thursday, April 6, 2006 9 to 10:30 a.m.
Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	Thursday, April 6, 2006 9 to 10 a.m.
Second Floor Conference Room Story County Human Services Building 126 S. Kellogg St. Ames, Iowa	Thursday, April 6, 2006 10 to 11 a.m.
Room 220 Pinecrest Office Building 1407 Independence Ave. Waterloo, Iowa	Thursday, April 6, 2006 10 to 11 a.m.

These amendments are intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 441—77.30(249A) as follows:

Amend the introductory paragraph as follows:

441—77.30(249A) HCBS ill and handicapped waiver service providers. HCBS ill and handicapped waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider *unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A provider hired through the consumer choices option for independent support*

HUMAN SERVICES DEPARTMENT[441](cont'd)

brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider. The following providers shall be eligible to participate in the Medicaid HCBS ill and handicapped waiver program if they meet the standards set forth below:

Adopt **new** subrules 77.30(13) through 77.30(17) as follows:

77.30(13) Financial management service. Consumers who elect the consumer choices option shall work with a financial institution that meets the following qualifications.

a. The financial institution shall either:

(1) Be cooperative, nonprofit, member-owned and member-controlled, and federally insured through and chartered by either the National Credit Union Administration (NCUA) or the credit union division of the Iowa department of commerce; or

(2) Be chartered by the Office of the Comptroller of the Currency, a bureau of the U.S. Department of the Treasury, and insured by the Federal Deposit Insurance Corporation (FDIC).

b. The financial institution shall complete a financial management readiness review and certification conducted by the department or its designee.

c. The financial institution shall obtain an Internal Revenue Service federal employee identification number dedicated to the financial management service.

d. The financial institution shall enroll as a Medicaid provider.

77.30(14) Independent support brokerage. Consumers who elect the consumer choices option shall work with an independent support broker who meets the following qualifications:

a. The broker must be at least 18 years of age.

b. The broker shall not be the guardian of a consumer aged 17 or under.

c. The broker shall not provide any other paid service to the consumer.

d. The broker shall not work for an individual or entity that is providing services to the consumer.

e. The broker must consent to a criminal background check and child and dependent adult abuse checks. The results shall be provided to the consumer.

f. The broker must complete an independent support brokerage certification approved by the department.

77.30(15) Self-directed personal care. Consumers who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the following requirements.

a. An individual or business providing self-directed personal care services shall have all the necessary licenses required by federal, state, and local laws.

b. All personnel providing self-directed personal care services shall:

(1) Be at least 16 years of age; and

(2) Be able to communicate successfully with the consumer.

c. The provider of self-directed personal care services shall:

(1) Prepare timecards or invoices approved by the department that identify what services were provided and the time when services were provided.

(2) Submit invoices and timecards to the financial management service within 30 days from the date when the service was provided.

77.30(16) Individual-directed goods and services. Consumers who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the following requirements.

a. An individual or business providing individual-directed goods and services shall have all the necessary licenses required by federal, state, and local laws.

b. All personnel providing individual-directed goods and services shall:

(1) Be at least 18 years of age; and

(2) Be able to communicate successfully with the consumer.

c. The provider of individual-directed goods and services shall:

(1) Prepare timecards or invoices approved by the department that identify what services were provided and the time when services were provided.

(2) Submit invoices and timecards to the financial management service within 30 days from the date when the service was provided.

77.30(17) Self-directed community supports and employment. Consumers who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the following requirements.

a. An individual or business providing self-directed community supports and employment shall have all the necessary licenses required by federal, state, and local laws.

b. All personnel providing individual-directed goods and services shall:

(1) Be at least 18 years of age; and

(2) Be able to communicate successfully with the consumer.

c. The provider of self-directed community supports and employment shall:

(1) Prepare timecards or invoices approved by the department that identify what services were provided and the time when services were provided.

(2) Submit invoices and timecards to the financial management service within 30 days from the date when the service was provided.

ITEM 2. Amend rule 441—77.33(249A) as follows:

Amend the introductory paragraph as follows:

441—77.33(249A) HCBS elderly waiver service providers. HCBS elderly waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider *unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider.* The following providers shall be eligible to participate in the Medicaid HCBS elderly waiver program if they meet the standards set forth below:

Adopt **new** subrules 77.33(16) through 77.33(20) as follows:

77.33(16) Financial management service. Consumers who elect the consumer choices option shall work with a fi-

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financial institution that meets the qualifications in subrule 77.30(13).

77.33(17) Independent support brokerage. Consumers who elect the consumer choices option shall work with an independent support broker who meets the qualifications in subrule 77.30(14).

77.33(18) Self-directed personal care. Consumers who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the requirements in subrule 77.30(15).

77.33(19) Individual-directed goods and services. Consumers who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the requirements in subrule 77.30(16).

77.33(20) Self-directed community supports and employment. Consumers who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the requirements in subrule 77.30(17).

ITEM 3. Amend rule 441—77.34(249A) as follows:

Amend the introductory paragraph as follows:

441—77.34(249A) HCBS AIDS/HIV waiver service providers. HCBS AIDS/HIV waiver services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider *unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider.* The following providers shall be eligible to participate in the Medicaid HCBS AIDS/HIV waiver program if they meet the standards set forth below:

Adopt **new** subrules 77.34(9) through 77.34(13) as follows:

77.34(9) Financial management service. Consumers who elect the consumer choices option shall work with a financial institution that meets the qualifications in subrule 77.30(13).

77.34(10) Independent support brokerage. Consumers who elect the consumer choices option shall work with an independent support broker who meets the qualifications in subrule 77.30(14).

77.34(11) Self-directed personal care. Consumers who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the requirements in subrule 77.30(15).

77.34(12) Individual-directed goods and services. Consumers who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the requirements in subrule 77.30(16).

77.34(13) Self-directed community supports and employment. Consumers who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the requirements in subrule 77.30(17).

ITEM 4. Amend rule 441—77.37(249A) as follows:

Amend the introductory paragraph and the second unnumbered paragraph as follows:

441—77.37(249A) HCBS MR waiver service providers. Providers shall be eligible to participate in the Medicaid HCBS mental retardation waiver program as approved HCBS MR service providers if they meet the requirements in this rule and the subrules applicable to the individual service.

The requirements in subrule 77.37(13) apply to all providers. *EXCEPTION: A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider and is not subject to the review requirements in subrule 77.37(13).* Also, services must be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider *unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider.* Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.

Adopt **new** subrules 77.37(28) through 77.37(32) as follows:

77.37(28) Financial management service. Consumers who elect the consumer choices option shall work with a financial institution that meets the qualifications in subrule 77.30(13).

77.37(29) Independent support brokerage. Consumers who elect the consumer choices option shall work with an independent support broker who meets the qualifications in subrule 77.30(14).

77.37(30) Self-directed personal care. Consumers who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the requirements in subrule 77.30(15).

77.37(31) Individual-directed goods and services. Consumers who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the requirements in subrule 77.30(16).

77.37(32) Self-directed community supports and employment. Consumers who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the requirements in subrule 77.30(17).

ITEM 5. Amend rule 441—77.39(249A) as follows:

Amend the introductory paragraph and the first unnumbered paragraph as follows:

441—77.39(249A) HCBS brain injury waiver service providers. ~~Adult day care, behavioral programming, case management, consumer directed attendant care, family counseling and training, home and vehicle modification, interim medical monitoring and treatment, personal emergency response, prevocational service, respite, specialized medical equipment, supported community living, supported employment, and transportation providers~~ Providers shall be eligible to participate as approved in the Medicaid brain injury waiver service providers in the Medicaid program based on *if they meet the requirements in this rule and the applicable subrules pertaining applicable* to the individual service. Providers and each of their staff *members* involved in direct consumer ser-

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vice must have training regarding or experience with consumers who have a brain injury, with the exception of providers of home and vehicle modification, specialized medical equipment, transportation, and personal emergency response, financial management, independent support brokerage, self-directed personal care, individual-directed goods and services, and self-directed community supports and employment.

Services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17 years old must be employed and supervised by an enrolled HCBS provider *unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider and is not subject to review under subrule 77.39(11).* Consumer-directed attendant care and interim medical monitoring and treatment providers must be at least 18 years of age.

Adopt **new** subrules 77.39(26) through 77.39(30) as follows:

77.39(26) Financial management service. Consumers who elect the consumer choices option shall work with a financial institution that meets the qualifications in subrule 77.30(13).

77.39(27) Independent support brokerage. Consumers who elect the consumer choices option shall work with an independent support broker who meets the qualifications in subrule 77.30(14).

77.39(28) Self-directed personal care. Consumers who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the requirements in subrule 77.30(15).

77.39(29) Individual-directed goods and services. Consumers who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the requirements in subrule 77.30(16).

77.39(30) Self-directed community supports and employment. Consumers who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the requirements in subrule 77.30(17).

ITEM 6. Amend rule 441—77.41(249A) as follows:

Amend the introductory paragraph and the first unnumbered paragraph as follows:

441—77.41(249A) HCBS physical disability waiver service providers. ~~Consumer-directed attendant care, home and vehicle modification, personal emergency response system, specialized medical equipment, and transportation service providers~~ Providers shall be eligible to participate as approved in the Medicaid physical disability waiver service providers in the Medicaid program based on *if they meet the requirements of this rule and the applicable subrules pertaining applicable* to the individual service. Enrolled providers shall maintain the certification listed in the applicable subrules in order to remain eligible providers.

Services shall be rendered by a person who is at least 16 years old (except as otherwise provided in this rule) and is not the spouse of the consumer served or the parent or stepparent of a consumer aged 17 or under. People who are 16 or 17

years old must be employed and supervised by an enrolled HCBS provider *unless they are employed to provide self-directed personal care services through the consumer choices option. A person hired for self-directed personal care services need not be supervised by an enrolled HCBS provider. A person hired through the consumer choices option for independent support brokerage, self-directed personal care, individual-directed goods and services, or self-directed community support and employment is not required to enroll as a Medicaid provider and is not subject to the requirements of subrule 77.41(1).*

Adopt **new** subrules 77.41(7) through 77.41(11) as follows:

77.41(7) Financial management service. Consumers who elect the consumer choices option shall work with a financial institution that meets the qualifications in subrule 77.30(13).

77.41(8) Independent support brokerage. Consumers who elect the consumer choices option shall work with an independent support broker who meets the qualifications in subrule 77.30(14).

77.41(9) Self-directed personal care. Consumers who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the requirements in subrule 77.30(15).

77.41(10) Individual-directed goods and services. Consumers who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the requirements in subrule 77.30(16).

77.41(11) Self-directed community supports and employment. Consumers who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the requirements in subrule 77.30(17).

ITEM 7. Amend rule 441—78.34(249A) by adopting **new** subrule 78.34(13) as follows:

78.34(13) Consumer choices option. The consumer choices option provides a consumer with a flexible monthly individual budget that is based on the consumer's service needs. With the individual budget, the consumer shall have the authority to purchase goods and services and may choose to employ providers of services and supports. Components of this service are set forth below.

a. Agreement. As a condition of participating in the consumer choices option, a consumer shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the consumer has been informed of the responsibilities and risks of electing the consumer choices option.

b. Individual budget amount. A monthly individual budget amount shall be set for each consumer. The consumer's department service worker or case manager shall determine the amount of each consumer's individual budget, based on the services and supports authorized in the consumer's service plan. The consumer shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a consumer in the HCBS ill and handicapped waiver are:

1. Consumer-directed attendant care (unskilled).
2. Home and vehicle modification.
3. Home-delivered meals.
4. Homemaker service.
5. Basic individual respite care.

(2) The department shall determine an average unit cost for each service selected under subparagraph (1) based on

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actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the consumer's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Anticipated costs for home and vehicle modification are not subject to the average cost in subparagraph (2) or the utilization adjustment factor in subparagraph (3). Costs for home and vehicle modification may be released in a one-time payment.

(6) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

c. Required service components. To participate in the consumer choices option, a consumer must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid HCBS ill and handicapped waiver services provider.

(1) Before hiring the individual support broker, the consumer shall receive the results of the background check conducted pursuant to 441—subrule 77.30(14).

(2) If the consumer chooses to hire a person who has a criminal record or founded abuse report, the consumer shall acknowledge this information on Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement.

d. Optional service components. A consumer who elects the consumer choices option may purchase the following services and supports, which shall be provided in the consumer's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the consumer remain in the home and community.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the consumer in developing and maintaining independence and community integration.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address a need identified in the consumer's service plan. The item or service shall decrease the consumer's need for other Medicaid services, promote the consumer's inclusion in the community, or increase the consumer's safety in the community.

e. Development of the individual budget. The individual support broker shall assist the consumer in developing and implementing the consumer's individual budget. The individual budget shall include:

(1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the

initial individual budget. After the initial implementation, the independent support broker shall not be paid for more than 20 hours of service during a 12-month period without prior approval by the department.

(3) The costs of any services and supports chosen by the consumer as described in paragraph "d."

f. Budget authority. The consumer shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services with the exception of the independent support broker and the financial management service. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for waiver goods and services identified in the individual budget. Consumers shall not use the individual budget to purchase room and board, sheltered workshop services, child care, or personal entertainment items.

(5) Reallocate funds among services included in the budget.

g. Delegation of budget authority. The consumer may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the consumer.

(3) The consumer shall sign a consent form that designates who the consumer has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

h. Employer authority. The consumer shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The consumer may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

i. Employment agreement. Any person employed by the consumer to provide services under the consumer choices option shall sign an employment agreement with the consumer that outlines the employee's and consumer's responsibilities.

j. Responsibilities of the independent support broker. The independent support broker shall perform the following services:

(1) Assist the consumer with developing the consumer's initial and subsequent individual budgets and with making any changes to the individual budget.

(2) Have monthly contact with the consumer for the first four months of implementation of the initial individual budget and have quarterly contact thereafter.

(3) Complete the required employment packet with the financial management service.

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(4) Assist with interviewing potential employees and entities providing services and supports if requested by the consumer.

(5) Assist the consumer with determining whether a potential employee meets the qualifications necessary to perform the job.

(6) Assist the consumer with obtaining a signed consent from a potential employee to conduct background checks if requested by the consumer.

(7) Assist the consumer with negotiating with entities providing services and supports if requested by the consumer.

(8) Assist the consumer with contracts and payment methods for services and support if requested by the consumer.

(9) Assist the consumer with developing an emergency backup plan. The emergency backup plan shall address any health and safety concerns.

(10) Review expenditure reports from the financial management service to ensure that services and supports in the individual budget are being provided.

(11) Document in writing on the independent support broker timecard every contact the broker has with the consumer. Contact documentation shall include information on the extent to which the consumer's individual budget has addressed the consumer's needs and the satisfaction of the consumer.

k. Responsibilities of the financial management service. The financial management service shall perform all of the following services:

(1) Receive Medicaid funds in an electronic transfer.

(2) Process and pay invoices for approved goods and services included in the individual budget.

(3) Enter the individual budget into the Web-based tracking system chosen by the department and enter expenditures as they are paid.

(4) Provide real-time individual budget account balances for the consumer, the independent support broker, and the department, available at a minimum during normal business hours (9 a.m. to 5 p.m., Monday through Friday).

(5) Conduct criminal background checks on potential employees, if requested.

(6) Verify for the consumer an employee's citizenship or alien status.

(7) Assist the consumer with fiscal and payroll-related responsibilities. Key employer-related tasks include:

1. Verifying that hourly wages comply with federal and state labor rules.

2. Collecting and processing timecards.

3. Withholding, filing, and paying federal, state and local income taxes, Medicare and Social Security (FICA) taxes, and federal (FUTA) and state (SUTA) unemployment and disability insurance taxes, as applicable.

4. Computing and processing other withholdings, as applicable.

5. Processing all judgments, garnishments, tax levies, or other withholding on an employee's pay as may be required by federal, state, or local laws.

6. Preparing and issuing employee payroll checks.

7. Preparing and disbursing IRS Forms W-2 and W-3 annually.

8. Processing federal advance earned income tax credit for eligible employees.

9. Refunding over-collected FICA, when appropriate.

10. Refunding over-collected FUTA, when appropriate.

(8) Purchase from the individual budget workers' compensation or other forms of insurance, as applicable or if requested by the consumer.

(9) Assist the consumer in completing required federal, state, and local tax and insurance forms.

(10) Establish and manage documents and files for the consumer and the consumer's employees.

(11) Monitor timecards, receipts, and invoices to ensure that they are consistent with the individual budget. Keep records of all timecards and invoices for each consumer for a total of five years.

(12) Provide monthly and quarterly status reports for the department, the independent support broker, and the consumer that include a summary of expenditures paid and amount of budget unused.

(13) Establish an accessible customer service system and a method of communication for the consumer and the independent support broker that includes alternative communication formats.

(14) Establish a customer services complaint reporting system.

(15) Develop a policy and procedures manual that is current with state and federal regulations and update as necessary.

(16) Develop a business continuity plan in the case of emergencies and natural disasters.

(17) Provide to the department an annual independent audit of the financial management service.

(18) Assist in implementing the state's quality management strategy related to the financial management service.

ITEM 8. Amend rule 441—78.37(249A) by adopting **new** subrule 78.37(16) as follows:

78.37(16) Consumer choices option. The consumer choices option provides a consumer with a flexible monthly individual budget that is based on the consumer's service needs. With the individual budget, the consumer shall have the authority to purchase goods and services and may choose to employ providers of services and supports. Components of this service are set forth below.

a. Agreement. As a condition of participating in the consumer choices option, a consumer shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the consumer has been informed of the responsibilities and risks of electing the consumer choices option.

b. Individual budget amount. A monthly individual budget amount shall be set for each consumer. The consumer's department service worker or Medicaid targeted case manager shall determine the amount of each consumer's individual budget, based on the services and supports authorized in the consumer's service plan. The consumer shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a consumer in the HCBS elderly waiver are:

1. Assistive devices.

2. Chore service.

3. Consumer-directed attendant care (unskilled).

4. Home and vehicle modification.

5. Home-delivered meals.

6. Homemaker service.

7. Basic individual respite care.

8. Senior companion.

9. Transportation.

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(2) The department shall determine an average unit cost for each service listed in subparagraph (1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the consumer's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Anticipated costs for home and vehicle modification are not subject to the average cost in subparagraph (2) or the utilization adjustment factor in subparagraph (3). Costs for home and vehicle modification may be released in a one-time payment.

(6) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

c. Required service components. To participate in the consumer choices option, a consumer must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid HCBS elderly waiver services provider.

(1) Before hiring the individual support broker, the consumer shall receive the results of the background check conducted pursuant to 441—subrule 77.30(14).

(2) If the consumer chooses to hire a person who has a criminal record or founded abuse report, the consumer shall acknowledge this information on Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement.

d. Optional service components. A consumer who elects the consumer choices option may purchase the following services and supports, which shall be provided in the consumer's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the consumer remain in the home and community.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the consumer in developing and maintaining independence and community integration.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address a need identified in the consumer's service plan. The item or service shall decrease the consumer's need for other Medicaid services, promote the consumer's inclusion in the community, or increase the consumer's safety in the community.

e. Development of the individual budget. The individual support broker shall assist the consumer in developing and implementing the consumer's individual budget. The individual budget shall include:

(1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. After the initial implementation, the independent support broker shall not be paid for more than 20 hours of service during a 12-month period without prior approval by the department.

(3) The costs of any services and supports chosen by the consumer as described in paragraph "d."

f. Budget authority. The consumer shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services with the exception of the independent support broker and the financial management service. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for waiver goods and services identified in the individual budget. Consumers shall not use the individual budget to purchase room and board, sheltered workshop services, child care, or personal entertainment items.

(5) Reallocate funds among services included in the budget.

g. Delegation of budget authority. The consumer may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the consumer.

(3) The consumer shall sign a consent form that designates who the consumer has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

h. Employer authority. The consumer shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The consumer may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

i. Employment agreement. Any person employed by the consumer to provide services under the consumer choices option shall sign an employment agreement with the consumer that outlines the employee's and consumer's responsibilities.

j. Responsibilities of the independent support broker. The independent support broker shall perform the services specified in 78.34(13)"j."

k. Responsibilities of the financial management service. The financial management service shall perform all of the services specified in 78.34(13)"k."

ITEM 9. Amend rule 441—78.38(249A) by adopting **new** subrule 78.38(9) as follows:

78.38(9) Consumer choices option. The consumer choices option provides a consumer with a flexible monthly

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individual budget that is based on the consumer's service needs. With the individual budget, the consumer shall have the authority to purchase goods and services and may choose to employ providers of services and supports. Components of this service are set forth below.

a. Agreement. As a condition of participating in the consumer choices option, a consumer shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the consumer has been informed of the responsibilities and risks of electing the consumer choices option.

b. Individual budget amount. A monthly individual budget amount shall be set for each consumer. The consumer's department service worker or Medicaid targeted case manager shall determine the amount of each consumer's individual budget, based on the services and supports authorized in the consumer's service plan. The consumer shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a consumer in the HCBS AIDS/HIV waiver are:

1. Consumer-directed attendant care (unskilled).
2. Home-delivered meals.
3. Homemaker service.
4. Basic individual respite care.

(2) The department shall determine an average unit cost for each service listed in subparagraph (1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the consumer's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

c. Required service components. To participate in the consumer choices option, a consumer must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid HCBS AIDS/HIV waiver services provider.

(1) Before hiring the individual support broker, the consumer shall receive the results of the background check conducted pursuant to 441—subrule 77.30(14).

(2) If the consumer chooses to hire a person who has a criminal record or founded abuse report, the consumer shall acknowledge this information on Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement.

d. Optional service components. A consumer who elects the consumer choices option may purchase the following services and supports, which shall be provided in the consumer's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a

range of assistance in activities of daily living and incidental activities of daily living that help the consumer remain in the home and community.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the consumer in developing and maintaining independence and community integration.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address a need identified in the consumer's service plan. The item or service shall decrease the consumer's need for other Medicaid services, promote the consumer's inclusion in the community, or increase the consumer's safety in the community.

e. Development of the individual budget. The individual support broker shall assist the consumer in developing and implementing the consumer's individual budget. The individual budget shall include:

(1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. After the initial implementation, the independent support broker shall not be paid for more than 20 hours of service during a 12-month period without prior approval by the department.

(3) The costs of any services and supports chosen by the consumer as described in paragraph "d."

f. Budget authority. The consumer shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services with the exception of the independent support broker and the financial management service. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for waiver goods and services identified in the individual budget. Consumers shall not use the individual budget to purchase room and board, sheltered workshop services, child care, or personal entertainment items.

(5) Reallocate funds among services included in the budget.

g. Delegation of budget authority. The consumer may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the consumer.

(3) The consumer shall sign a consent form that designates who the consumer has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

h. Employer authority. The consumer shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The consumer may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

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- (4) Specify additional employee qualifications.
- (5) Determine employee duties.
- (6) Determine employee wages and benefits.
- (7) Schedule employees.
- (8) Train and supervise employees.

i. Employment agreement. Any person employed by the consumer to provide services under the consumer choices option shall sign an employment agreement with the consumer that outlines the employee's and consumer's responsibilities.

j. Responsibilities of the independent support broker. The independent support broker shall perform the services specified in 78.34(13)"j."

k. Responsibilities of the financial management service. The financial management service shall perform all of the services specified in 78.34(13)"k."

ITEM 10. Amend rule 441—78.41(249A) by adopting new subrule 78.41(15) as follows:

78.41(15) Consumer choices option. The consumer choices option provides a consumer with a flexible monthly individual budget that is based on the consumer's service needs. With the individual budget, the consumer shall have the authority to purchase goods and services and may choose to employ providers of services and supports. Components of this service are set forth below.

a. Agreement. As a condition of participating in the consumer choices option, a consumer shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the consumer has been informed of the responsibilities and risks of electing the consumer choices option.

b. Individual budget amount. A monthly individual budget amount shall be set for each consumer. The consumer's department service worker or Medicaid targeted case manager shall determine the amount of each consumer's individual budget, based on the services and supports authorized in the consumer's service plan. The consumer shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a consumer in the HCBS mental retardation waiver are:

1. Consumer-directed attendant care (unskilled).
2. Day habilitation.
3. Home and vehicle modification.
4. Prevocational services.
5. Basic individual respite care.
6. Supported community living.
7. Supported employment.
8. Transportation.

(2) The department shall determine an average unit cost for each service listed in subparagraph (1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the consumer's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall

be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Anticipated costs for home and vehicle modification are not subject to the average cost in subparagraph (2) or the utilization adjustment factor in subparagraph (3). Costs for home and vehicle modification may be released in a one-time payment.

(6) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

c. Required service components. To participate in the consumer choices option, a consumer must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid HCBS mental retardation waiver services provider.

(1) Before hiring the individual support broker, the consumer shall receive the results of the background check conducted pursuant to 441—subrule 77.30(14).

(2) If the consumer chooses to hire a person who has a criminal record or founded abuse report, the consumer shall acknowledge this information on Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement.

d. Optional service components. A consumer who elects the consumer choices option may purchase the following services and supports, which shall be provided in the consumer's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the consumer remain in the home and community.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the consumer in developing and maintaining independence and community integration.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address a need identified in the consumer's service plan. The item or service shall decrease the consumer's need for other Medicaid services, promote the consumer's inclusion in the community, or increase the consumer's safety in the community.

e. Development of the individual budget. The individual support broker shall assist the consumer in developing and implementing the consumer's individual budget. The individual budget shall include:

(1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. After the initial implementation, the independent support broker shall not be paid for more than 20 hours of service during a 12-month period without prior approval by the department.

(3) The costs of any services and supports chosen by the consumer as described in paragraph "d."

f. Budget authority. The consumer shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services with the exception of the independent support broker and the financial management service. Reimbursement rates for the indepen-

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dent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for waiver goods and services identified in the individual budget. Consumers shall not use the individual budget to purchase room and board, sheltered workshop services, child care, or personal entertainment items.

(5) Reallocate funds among services included in the budget.

g. Delegation of budget authority. The consumer may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the consumer.

(3) The consumer shall sign a consent form that designates who the consumer has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

h. Employer authority. The consumer shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The consumer may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

i. Employment agreement. Any person employed by the consumer to provide services under the consumer choices option shall sign an employment agreement with the consumer that outlines the employee's and consumer's responsibilities.

j. Responsibilities of the independent support broker. The independent support broker shall perform the services specified in 78.34(13)"j."

k. Responsibilities of the financial management service. The financial management service shall perform all of the services specified in 78.34(13)"k."

ITEM 11. Amend rule 441—78.43(249A) by adopting **new** subrule 78.43(15) as follows:

78.43(15) Consumer choices option. The consumer choices option provides a consumer with a flexible monthly individual budget that is based on the consumer's service needs. With the individual budget, the consumer shall have the authority to purchase goods and services and may choose to employ providers of services and supports. Components of this service are set forth below.

a. Agreement. As a condition of participating in the consumer choices option, a consumer shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the consumer has been informed of the responsibilities and risks of electing the consumer choices option.

b. Individual budget amount. A monthly individual budget amount shall be set for each consumer. The consumer's department service worker or Medicaid targeted case manager shall determine the amount of each consumer's individual budget, based on the services and supports authorized in the consumer's service plan. The consumer shall be informed of

the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a consumer in the HCBS brain injury waiver are:

1. Consumer-directed attendant care (unskilled).

2. Day habilitation.

3. Home and vehicle modification.

4. Prevocational services.

5. Basic individual respite care.

6. Specialized medical equipment.

7. Supported community living.

8. Supported employment.

9. Transportation.

(2) The department shall determine an average unit cost for each service listed in subparagraph (1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the consumer's service plan before calculating the value of that service to be included in the individual budget amount.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Anticipated costs for home and vehicle modification are not subject to the average cost in subparagraph (2) or the utilization adjustment factor in subparagraph (3). Costs for home and vehicle modification may be released in a one-time payment.

(6) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

c. Required service components. To participate in the consumer choices option, a consumer must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid HCBS brain injury waiver services provider.

(1) Before hiring the individual support broker, the consumer shall receive the results of the background check conducted pursuant to 441—subrule 77.30(14).

(2) If the consumer chooses to hire a person who has a criminal record or founded abuse report, the consumer shall acknowledge this information on Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement.

d. Optional service components. A consumer who elects the consumer choices option may purchase the following services and supports, which shall be provided in the consumer's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the consumer remain in the home and community.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the consumer in developing and maintaining independence and community integration.

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(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address a need identified in the consumer's service plan. The item or service shall decrease the consumer's need for other Medicaid services, promote the consumer's inclusion in the community, or increase the consumer's safety in the community.

e. Development of the individual budget. The individual support broker shall assist the consumer in developing and implementing the consumer's individual budget. The individual budget shall include:

(1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. After the initial implementation, the independent support broker shall not be paid for more than 20 hours of service during a 12-month period without prior approval by the department.

(3) The costs of any services and supports chosen by the consumer as described in paragraph "d."

f. Budget authority. The consumer shall have authority over the individual budget authorized by the department to perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services with the exception of the independent support broker and the financial management service. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for waiver goods and services identified in the individual budget. Consumers shall not use the individual budget to purchase room and board, sheltered workshop services, child care, or personal entertainment items.

(5) Reallocate funds among services included in the budget.

g. Delegation of budget authority. The consumer may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the consumer.

(3) The consumer shall sign a consent form that designates who the consumer has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

h. Employer authority. The consumer shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The consumer may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

i. Employment agreement. Any person employed by the consumer to provide services under the consumer choices

option shall sign an employment agreement with the consumer that outlines the employee's and consumer's responsibilities.

j. Responsibilities of the independent support broker. The independent support broker shall perform the services specified in 78.34(13)"j."

k. Responsibilities of the financial management service. The financial management service shall perform all of the services specified in 78.34(13)"k."

ITEM 12. Amend rule 441—78.46(249A) by adopting **new** subrule 78.46(6) as follows:

78.46(6) Consumer choices option. The consumer choices option provides a consumer with a flexible monthly individual budget that is based on the consumer's service needs. With the individual budget, the consumer shall have the authority to purchase goods and services and may choose to employ providers of services and supports. Components of this service are set forth below.

a. Agreement. As a condition of participating in the consumer choices option, a consumer shall sign Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement, to document that the consumer has been informed of the responsibilities and risks of electing the consumer choices option.

b. Individual budget amount. A monthly individual budget amount shall be set for each consumer. The consumer's department service worker or Medicaid targeted case manager shall determine the amount of each consumer's individual budget, based on the services and supports authorized in the consumer's service plan. The consumer shall be informed of the individual budget amount during the development of the service plan.

(1) Services that may be included in determining the individual budget amount for a consumer in the HCBS physical disability waiver are:

1. Consumer-directed attendant care (unskilled).

2. Home and vehicle modification.

3. Specialized medical equipment.

4. Transportation.

(2) The department shall determine an average unit cost for each service listed in subparagraph (1) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.

(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the consumer's service plan when calculating the value of that service to be included in the individual budget.

(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality.

(5) Anticipated costs for home and vehicle modification are not subject to the average cost in subparagraph (2) or the utilization adjustment factor in subparagraph (3). Costs for home and vehicle modification may be released in a one-time payment.

(6) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

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c. Required service components. To participate in the consumer choices option, a consumer must hire an independent support broker and must work with a financial management service that is enrolled as a Medicaid HCBS physical disability waiver services provider.

(1) Before hiring the individual support broker, the consumer shall receive the results of the background check conducted pursuant to 441—subrule 77.30(14).

(2) If the consumer chooses to hire a person who has a criminal record or founded abuse report, the consumer shall acknowledge this information on Form 470-4289, HCBS Consumer Choices Informed Consent and Risk Agreement.

d. Optional service components. A consumer who elects the consumer choices option may purchase the following services and supports, which shall be provided in the consumer's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services or goods that provide a range of assistance in activities of daily living and incidental activities of daily living that help the consumer remain in the home and community.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the consumer in developing and maintaining independence and community integration.

(3) Individual-directed goods and services. Individual-directed goods and services are services, equipment, or supplies not otherwise provided through the Medicaid program that address a need identified in the consumer's service plan. The item or service shall decrease the consumer's need for other Medicaid services, promote the consumer's inclusion in the community, or increase the consumer's safety in the community.

e. Development of the individual budget. The individual support broker shall assist the consumer in developing and implementing the consumer's individual budget. The individual budget shall include:

(1) The costs of the financial management service.

(2) The costs of the independent support broker. The independent support broker may be compensated for up to 6 hours of service for assisting with the implementation of the initial individual budget. After the initial implementation, the independent support broker shall not be paid for more than 20 hours of service during a 12-month period without prior approval by the department.

(3) The costs of any services and supports chosen by the consumer as described in paragraph "d."

f. Budget authority. The consumer shall have authority over the individual budget authorized by the department to

perform the following tasks:

(1) Contract with entities to provide services and supports as described in this subrule.

(2) Determine the amount to be paid for services with the exception of the independent support broker and the financial management service. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2).

(3) Schedule the provision of services.

(4) Authorize payment for waiver goods and services identified in the individual budget. Consumers shall not use the individual budget to purchase room and board, sheltered workshop services, child care, or personal entertainment items.

(5) Reallocate funds among services included in the budget.

g. Delegation of budget authority. The consumer may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the consumer.

(3) The consumer shall sign a consent form that designates who the consumer has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

h. Employer authority. The consumer shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The consumer may perform the following functions:

(1) Recruit employees.

(2) Select employees from a worker registry.

(3) Verify employee qualifications.

(4) Specify additional employee qualifications.

(5) Determine employee duties.

(6) Determine employee wages and benefits.

(7) Schedule employees.

(8) Train and supervise employees.

i. Employment agreement. Any person employed by the consumer to provide services under the consumer choices option shall sign an employment agreement with the consumer that outlines the employee's and consumer's responsibilities.

j. Responsibilities of the independent support broker. The independent support broker shall perform the services specified in 78.34(13)"j."

k. Responsibilities of the financial management service. The financial management service shall perform all of the services specified in 78.34(13)"k."

ITEM 13. Amend rule 441—79.1(249A) as follows:

Amend subrule 79.1(2), provider category "HCBS waiver service providers," by adopting **new** numbered paragraphs "30" through "34" as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
30. Financial management service	Fee schedule	\$65 per enrolled consumer per month
31. Independent support broker	Rate negotiated by consumer	\$15 per hour
32. Self-directed personal care	Rate negotiated by consumer	Determined by consumer's individual budget
33. Self-directed community supports and employment	Rate negotiated by consumer	Determined by consumer's individual budget
34. Individual-directed goods and services	Rate negotiated by consumer	Determined by consumer's individual budget

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Adopt **new** subrule 79.1(9) as follows:

79.1(9) HCBS consumer choices financial management.

a. Monthly allocation. A financial management service provider shall receive a monthly fee as established in subrule 79.1(2) for each consumer electing to work with that provider under the HCBS consumer choices option. The financial management service provider shall also receive monthly the consumer's individual budget amount as determined under 441—paragraph 78.34(13)“b,” 78.37(16)“b,” 78.38(9)“b,” 78.41(15)“b,” 78.43(15)“b,” or 78.46(6)“b.”

b. Cost settlement. The financial management service shall pay from the monthly allocated individual budget amount for independent support broker service, self-directed personal care services, individual-directed goods and services, and self-directed community supports and employment as authorized by the consumer. On a quarterly basis during the federal fiscal year, the department shall perform a cost settlement. The cost settlement represents the difference between the amount received for the allocated individual budget and the amount actually utilized.

c. Start-up grants. A qualifying financial management service provider may be reimbursed up to \$10,000 for the costs associated for starting the service.

(1) Start-up reimbursement shall be issued as long as funds for this purpose are available from the Robert Wood Johnson Foundation or until September 30, 2007.

(2) Funds will not be distributed until the provider meets all of the following criteria:

1. The provider shall meet the requirements to be certified to participate in an HCBS waiver program as set forth in 441—subrule 77.30(13), 77.33(16), 77.34(9), 77.37(28), 77.39(26), or 77.41(7), including successful completion of a readiness review as approved by the department.

2. The provider shall enter into an agreement with the department to provide statewide coverage for not less than one year from the date that the funds are distributed.

3. The provider shall submit to the department for approval a budget identifying the costs associated with starting financial management service.

(3) If the provider fails to continue to meet these qualifications after the funds have been distributed, the department may recoup all or part of the funds paid to the provider.

ITEM 14. Strike the terms “Iowa Foundation for Medical Care,” “IFMC,” “foundation,” “Iowa Foundation for Medical Care (IFMC) review coordinator” and “IFMC review coordinator” and insert in lieu thereof “IME medical services unit” wherever the terms appear in paragraph 83.2(1)“d,” subparagraph 83.3(3)“a”(4), rule 441—83.9(249A), paragraphs 83.22(1)“d” and 83.22(2)“a,” rule 441—83.29(249A), paragraph 83.42(1)“b,” subparagraph 83.43(3)“a”(2), paragraph 83.61(1)“c,” rules 441—83.49(249A) and 441—83.69(249A), paragraphs 83.82(1)“f” and “g,” subparagraph 83.82(2)“a”(1), paragraphs 83.83(2)“a” and 83.83(3)“c,” subrule 83.87(3), rule 441—83.89(249A), paragraph 83.102(1)“h,” subrule 83.103(2), paragraph 83.103(3)“c,” and subrules 83.103(4), 83.107(2), and 83.109(2).

ITEM 15. Amend subrule 83.2(1) by adopting **new** paragraph “h” as follows:

h. To be eligible for the consumer choices option as set forth in 441—subrule 78.34(13), a person cannot be living in a residential care facility.

ITEM 16. Amend rule 441—83.6(249A) as follows:

441—83.6(249A) Allowable services. Services allowable under the ill and handicapped waiver are homemaker services, home health services, adult day care services, respite care services, nursing services, counseling services, consumer-directed attendant care services, interim medical monitoring and treatment services, home and vehicle modification services, personal emergency response system, home-delivered meals, and nutritional counseling, *financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services* as set forth in rule 441—83.6(249A).

ITEM 17. Amend rule 441—83.7(249A) as follows:

441—83.7(249A) Service plan. A service plan shall be prepared for ill and handicapped waiver consumers in accordance with rule 441—130.7(234) except that service plans for both children and adults shall be completed every 12 months or when there is significant change in the person's situation or condition.

83.7(1) ~~In addition, the~~ *The* service plan shall include the frequency of the ill and handicapped waiver services and the types of providers who will deliver the services.

83.7(2) *The service plan shall indicate whether the consumer has elected the consumer choices option. If the consumer has elected the consumer choices option, the service plan shall identify:*

a. *The independent support broker selected by the consumer; and*

b. *The financial management services selected by the consumer.*

83.7(3) The service plan shall also list all nonwaiver Medicaid services.

83.7(4) *The service plan shall identify a plan for emergencies and the supports available to the consumer in an emergency.*

ITEM 18. Rescind the definition of “Iowa Foundation for Medical Care” in rules 441—83.21(249A), 441—83.41(249A), 441—83.81(249A), and 441—83.101(249A).

ITEM 19. Strike the term “long-term care coordinating unit” and insert in lieu thereof the term “senior living coordinating unit” wherever the term appears in rule 441—83.21(249A) and paragraphs 83.22(1)“f,” 83.22(2)“a,” and 83.22(3)“a” and “d.”

ITEM 20. Amend subrule 83.22(1) by adopting **new** paragraph “g” as follows:

g. For the consumer choices option as set forth in 441—subrule 78.37(16), residing in a living arrangement other than a residential care facility.

ITEM 21. Amend subrule 83.23(3), paragraph “c,” as follows:

c. An applicant must be given the choice between elderly waiver services and institutional care. The consumer, guardian, or attorney in fact under a durable power of attorney for health care shall sign Form 470-3156, *Long-Term Care Senior Living Coordinating Unit Common-Care Client Service Plan*, indicating the consumer's choice of caregiver.

ITEM 22. Amend rule 441—83.26(249A) as follows:

441—83.26(249A) Allowable services. Services allowable under the elderly waiver are adult day care, emergency response system, homemaker, home health aide, nursing, respite care, chore, home-delivered meals, home and vehicle modification, mental health outreach, transportation, nutri-

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tional counseling, assistive devices, senior companions, and consumer-directed attendant care services, *financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services* as set forth in rule 441—78.37(249A).

ITEM 23. Amend rule 441—83.27(249A) as follows:

441—83.27(249A) Service plan. Form 470-3156, ~~Long-Term Senior Living Coordinating Unit Common-Care Client~~ Service Plan, shall be completed jointly by the area agency on aging case management program for the frail elderly and the department service worker.

83.27(1) *The service plan shall indicate whether the consumer has elected the consumer choices option. If the consumer has elected the consumer choices option, the service plan shall identify:*

- a. *The independent support broker selected by the consumer; and*
- b. *The financial management services selected by the consumer.*

83.27(2) *The service plan shall identify a plan for emergencies and the supports available to the consumer in an emergency.*

ITEM 24. Amend subrule **83.42(1)** by adopting **new** paragraph “g” as follows:

- g. For the consumer choices option as set forth in 441—subrule 78.38(9), not be living in a residential care facility.

ITEM 25. Amend rule 441—83.46(249A) as follows:

441—83.46(249A) Allowable services. Services allowable under the AIDS/HIV waiver are counseling services, home health aide services, homemaker services, nursing care services, respite care services, home-delivered meals, adult day care services, and consumer-directed attendant care services, *financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services* as set forth in rule 441—78.38(249A).

ITEM 26. Amend rule 441—83.47(249A) as follows:

441—83.47(249A) Service plan. A service plan shall be prepared for AIDS/HIV waiver consumers in accordance with rule 441—130.7(234) except that service plans for both children and adults shall be completed every 12 months or when there is significant change in the person’s situation or condition.

83.47(1) ~~In addition, the~~ *The service plan shall include the frequency of the AIDS/HIV waiver services and the types of providers who will deliver the services.*

83.47(2) *The service plan shall indicate whether the consumer has elected the consumer choices option. If the consumer has elected the consumer choices option, the service plan shall identify:*

- a. *The independent support broker selected by the consumer; and*
- b. *The financial management services selected by the consumer.*

83.47(3) Service plans for consumers aged 20 or under must be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services.

83.47(4) *The service plan shall identify a plan for emergencies and the supports available to the consumer in an emergency.*

ITEM 27. Amend subrule **83.61(1)** by adopting **new** paragraph “m” as follows:

- m. For the consumer choices option as set forth in 441—subrule 78.41(5), not be living in a residential care facility.

ITEM 28. Amend subrule **83.62(3)**, paragraph “g,” as follows:

g. Children who were receiving rehabilitative treatment and supportive services under the group care program pursuant to 441—Chapter 185, division V, who were placed with a rehabilitative treatment and supportive service provider as a result of a delinquency or CINA adjudication will be ineligible unless a regional administrator of one of the department’s five regions ~~the department service area manager or the regional administrator’s~~ *the department service area manager’s* designee determines that the child would have been eligible and the services covered aside from the adjudication. The regional administrator ~~service area manager or designee~~ shall base an approval or denial on documentation regarding the child’s individual situation. This documentation shall include, but is not limited to, the following:

ITEM 29. Amend rule 441—83.66(249A) as follows:

441—83.66(249A) Allowable services. Services allowable under the HCBS MR waiver are supported community living, respite, personal emergency response system, nursing, home health aide, home and vehicle modification, supported employment, consumer-directed attendant care services, interim medical monitoring and treatment services, transportation, adult day care, day habilitation, and prevocational services, *financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services* as set forth in rule 441—78.41(249A).

ITEM 30. Amend rule 441—83.67(249A) as follows:

441—83.67(249A) Service plan. A service plan shall be prepared and utilized for each HCBS MR waiver consumer.

83.67(1) Development. The service plan shall be developed by the interdisciplinary team, which includes the consumer, and, if appropriate, the legal representative, consumer’s family, case manager or service worker, service providers, and others directly involved.

83.67(2) Retention. The service plan shall be stored by the case manager for a minimum of three years.

83.67(3) Interdisciplinary team meeting. The interdisciplinary team meeting shall be conducted before the current service plan expires. ~~The service plan shall incorporate the concept of managed care.~~

83.67(4) Information in plan. The plan shall be in accordance with 441—subrule ~~24.4(4)~~ *24.4(3)* and shall additionally include the following information to assist in evaluating the program:

83.67(1) a. A listing of all services received by a consumer at the time of waiver program enrollment.

83.67(2) b. For supported community living consumers ~~the plan shall include identification of:~~

a. (1) The consumers’ ~~consumer’s~~ living environment at the time of waiver enrollment.

b. (2) The number of hours per day of on-site staff supervision needed by the consumer.

e. (3) The number of other waiver consumers who will live with the consumer in the living unit.

~~**83.67(3)** Rescinded IAB 1/4/95, effective 3/1/95.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

83.67(4) c. An identification and justification of any restriction of a *the* consumer's rights including, but not limited to:

- a. (1) Maintenance of personal funds.
- b. (2) Self-administration of medications.

83.67(5) d. The name of the service provider responsible for providing the *each* service.

83.67(6) e. The service funding source.

83.67(7) f. The amount of the service to be received by the consumer.

g. Whether the consumer has elected the consumer choices option and, if so:

(1) The independent support broker selected by the consumer; and

(2) The financial management service selected by the consumer.

h. A plan for emergencies and identification of the supports available to the consumer in an emergency.

83.67(8) 83.67(5) Documentation. The Medicaid case manager shall ensure that the consumer's case file contains the consumer's service plan and documentation supporting the diagnosis of mental retardation.

~~a. to d. Rescinded IAB 8/7/02, effective 10/1/02.~~

83.67(9) 83.67(6) Approval of plan. The plan shall be approved through the Individualized Services Information System (ISIS). Services shall be entered into ISIS based on the service plan.

a. Services must be authorized and entered into ISIS before the plan implementation date.

b. The department or county has 15 working days after receipt of the summary and service costs in which to approve the services and service cost or request modification of the service plan unless the parties mutually agree to extend that time frame.

c. If the department or county and service worker or case manager are unable to agree on the terms of the services or service cost within ten days, the department or county has final authority regarding the services and service cost.

d. If a notice of decision is not received from a county within 30 days from the date of request for services, the request shall be sent to the department of human services with documentation verifying the original submission of the request to the county. The department shall send a letter to the county central point of coordination and county board of supervisors requesting a response within 10 days. If no response is received within 10 days, the ~~bureau of long-term care designee~~ department will make the decision, as stated in paragraph "b."

ITEM 31. Amend subrule **83.82(1)** by adopting **new** paragraph "**m**" as follows:

m. For the consumer choices option as set forth in rule 441—subrule 78.43(15), not be living in a residential care facility.

ITEM 32. Amend rule 441—83.86(249A) as follows:

441—83.86(249A) Allowable services. Services allowable under the brain injury waiver are case management, respite, personal emergency response, supported community living, behavioral programming, family counseling and training, home and vehicle modification, specialized medical equipment, prevocational services, transportation, supported employment services, adult day care, consumer-directed attendant care services, and interim medical monitoring and treatment services, *financial management, independent support brokerage, self-directed personal care, self-directed commu-*

nity supports and employment, and individual-directed goods and services as set forth in rule 441—78.43(249A).

ITEM 33. Amend subrule 83.87(1) as follows:

83.87(1) Information in plan. The plan shall be in accordance with 441—subrule 24.4(4) 24.4(3) and shall additionally include the following information to assist in evaluating the program:

a. A listing of all services received by a consumer at the time of waiver program enrollment.

b. For supported community living consumers ~~the plan shall include identification of:~~

(1) ~~The consumers'~~ consumer's living environment at the time of waiver enrollment.

(2) The number of hours per day of on-site staff supervision needed by the consumer.

(3) The number of other waiver consumers who will live with the consumer in the living unit.

c. An identification and justification of any restriction of a consumer's rights including, but not limited to:

(1) Maintenance of personal funds.

(2) Self-administration of medications.

d. The names of all providers responsible for providing all services.

e. All service funding sources.

f. The amount of the service to be received by the consumer.

g. Whether the consumer has elected the consumer choices option and, if so:

(1) The independent support broker selected by the consumer; and

(2) The financial management service selected by the consumer.

h. A plan for emergencies and identification of the supports available to the consumer in an emergency.

ITEM 34. Amend subrule **83.102(1)** by adopting **new** paragraph "**k**" as follows:

k. For the consumer choices option as set forth in 441—subrule 78.46(6), not be living in a residential care facility.

ITEM 35. Amend rule 441—83.106(249A) as follows:

441—83.106(249A) Allowable services. The services allowable under the physical disability waiver are consumer-directed attendant care, home and vehicle modification, personal emergency response system, transportation service, and specialized medical equipment, *financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services* as set forth in rule 441—78.46(249A).

ITEM 36. Amend subrule 83.107(1) as follows:

83.107(1) Information in plan. The plan shall be in accordance with 441—subrule 24.2(2) 24.4(3) and shall additionally include the following information to assist in evaluating the program:

a. A listing of all services received by a consumer at the time of waiver program enrollment.

b. The name of all providers responsible for providing all services.

c. All service funding sources.

d. The amount of the service to be received by the consumer.

e. Whether the consumer has elected the consumer choices option and, if so:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) *The independent support broker selected by the consumer; and*

(2) *The financial management services selected by the consumer.*

f. *A plan for emergencies and identification of the supports available to the consumer in an emergency.*

ARC 4979B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment excludes from Medicaid coverage drugs used for the treatment of sexual or erectile dysfunction. The Iowa Medicaid program stopped paying for drugs used to treat male or female sexual dysfunction effective November 1, 2005. That decision was based on the advice of the Drug Utilization Review Commission that such drugs were not medically necessary, since existing rules at 441 IAC 79.9(2)"c" limit all Medicaid services to those "required to meet the medical need of the patient."

Effective for drugs dispensed on or after January 1, 2006, Title XIX of the federal Social Security Act has been amended to:

- Allow the exclusion of "agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration," and
- Prohibit federal funding for any such drugs.

The prohibition of federal funding provides additional grounds for the exclusion of drugs used for the treatment of sexual or erectile dysfunction and justifies an explicit exclusion in state rules.

This amendment does not provide for waiver in specified situations because the prohibition of federal funding does not provide for any exceptions and because the Drug Utilization Review Commission advised that drugs used to treat sexual dysfunction (male or female) are never medically necessary. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before April 5, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend paragraph **78.1(2)"a,"** subparagraph (2), by adopting **new** numbered paragraph "**9**" as follows:

9. Drugs used for the treatment of sexual or erectile dysfunction, except when used to treat a condition other than sexual or erectile dysfunction, for which the drug has been approved by the U.S. Food and Drug Administration.

ARC 4976B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 181, "Continuing Education for Optometrists," Iowa Administrative Code.

The amendments amend continuing education requirements regarding implementation of the substitution of Council on Endorsed Licensure Mobility for Optometrists (CELMO) certification in lieu of proof of attendance at a continuing education program.

Any interested person may make written comments on the proposed amendments no later than April 4, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 4, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph **181.3(2)"a,"** subparagraph (4), as follows:

(4) *Beginning with the July 1, 2006, biennium, Therapeutic therapeutic licensees who provide proof of current CELMO certification meet continuing education requirements for that the biennium.*

ITEM 2. Amend paragraph **181.3(2)"c,"** introductory paragraph, as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Required continuing education hours. *Beginning with the July 1, 2006, biennium, Therapeutic therapeutic* licensees who provide proof of current CELMO certification meet continuing education requirements for that the biennium. If the licensee does not have current proof of CELMO certification, then the following are required to meet the continuing education requirement in paragraph 181.2(1)“b”:

ITEM 3. Amend subrule 181.4(2), introductory paragraph, as follows:

181.4(2) *Beginning with the July 1, 2006, biennium, The* licensee shall provide the following information to the board for auditing purposes or in lieu thereof provide proof of current CELMO certification:

ARC 4961B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 199, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Physical Therapy Examiners,” Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than April 4, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 4, 2006, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148A and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend rule **645—199.1(17A)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ARC 4960B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 205, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Occupational Therapy Examiners,” Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than April 4, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 4, 2006, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend rule **645—205.1(17A)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ARC 4958B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners hereby gives Notice of In-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tended Action to amend Chapter 279, "Administrative and Regulatory Authority for the Board of Social Work Examiners," and Chapter 281, "Continuing Education for Social Workers," Iowa Administrative Code.

The proposed amendments provide the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs and remove language relating to sponsors from the continuing education chapter.

Any interested person may make written comments on the proposed amendments no later than April 20, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 20, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—279.1(17A)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ITEM 2. Amend subrule **281.3(2)** by striking paragraph "f" as follows and relettering paragraphs "g" through "k" as "f" through "j":

f.—A program or course which is offered or sponsored by an approved continuing education sponsor.

ARC 4973B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Interpreter for the Hearing Impaired Examiners hereby gives Notice of Intended Action to amend Chapter 360, "Administrative and Regulatory Authority for the Board of Interpreter for the Hearing Impaired Examiners," Iowa Administrative Code.

The proposed amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Any interested person may make written comments on the proposed amendment no later than April 4, 2006, addressed

to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 4, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 154E and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **645—360.1(17A)** by adding a **new** definition in alphabetical order as follows:

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

ARC 4974B**SECRETARY OF STATE[721]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 52.5, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, "Voting Systems," Iowa Administrative Code.

The proposed amendments provide additional security procedures to protect the integrity of the election process for counties using voting systems with memory cards. Additional amendments provide for the preparation, testing and use procedures for Election Systems & Software's AutoMARK Voter Assist Terminal (VAT), version 1.0. AutoMARK VAT is an electronic vote-marking device certified for use only with Election Systems & Software Unity 2.5 voting system, including the M100 precinct count optical scanner and the Model 650 central count optical scanner.

Any interested person may make written suggestions or comments on these proposed amendments through 5 p.m. April 4, 2006. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823 or at the Secretary of State's offices on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by 5 p.m. on April 4, 2006.

These amendments are intended to implement Iowa Code chapter 52.

SECRETARY OF STATE[721](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule:

721—22.51(52) Memory cards. A memory card is a small, removable device containing data files of the election definition programmed for use in voting equipment for each election. For all voting equipment, the following security measures are required:

1. Serial number. Each memory card shall have a serial number printed on a readily visible permanent label. The label shall include the name of the county.

2. Inventory. Memory cards shall be maintained under perpetual inventory. The perpetual inventory records shall reflect:

- The date each card was acquired;
- Each use of each card in an election;
- Each maintenance activity to a card, such as changing the battery;
- Any problems or errors detected while using the card during its life;
- Records of the disposal of any cards at the end of their useful life or upon return to the vendor for maintenance or warranty claims.

3. Custody. During the period when memory cards are removed from storage, prepared for election, and until they are sealed into a voting device, a record of the chain of custody shall be maintained. No one individual should be alone with the cards at any time. If cards must be transported to another location, such as a warehouse, a transport container with a numbered seal shall be used.

4. Election log. For each election, the commissioner shall create a log to record the serial numbers of each memory card, the voting device into which the memory card was installed, the serial number of the seal, the ballot style and the precinct to which the machine is assigned. This log may be a single document or a document for each machine.

5. Installation. When memory cards are installed, they shall be sealed into the machine immediately and the log entries completed.

6. Immediately before the polls open on election day, the precinct election officials shall set the memory cards in election mode.

7. Verification log. The commissioner shall provide to each precinct a verification log showing:

- Machine serial numbers;
- Seal numbers from the voting equipment;
- Key numbers; and
- Seal numbers from ballot containers.

8. Election day. Before the polls are opened, the precinct election officials shall verify the numbers and sign the verification log. After the polls are closed and before leaving the polling place, the precinct election officials shall verify again that the seals are intact and record the seal numbers.

9. Voting equipment check-in. When the voting equipment is returned to the commissioner, the numbers on the verification log shall be compared with the seals on the voting equipment. This log shall then become part of the permanent election record.

10. Storage. When machines are stored, the machine serial numbers and the seal numbers shall be verified against the verification log created in paragraph "7." When the memory

cards are removed, their serial numbers shall also be verified against the log.

11. Replacing seals or memory cards. If a seal is accidentally broken or a memory card is replaced due to either errors or maintenance issues, the issuance of a new seal and entry into the log shall be witnessed and resolved by more than one person. The facts of the incident and the individuals who detected and resolved it shall be recorded.

12. Before election officials certify the results of the election, the individual results reports from the precincts, as signed by the precinct election officials, shall be compared to the accumulated election results compiled in the commissioner's office to verify that transmitted and accumulated totals match the results witnessed by the election officials. Any discrepancies in these totals shall be reconciled before the election results are certified.

ITEM 2. Adopt the following **new** subrule:

22.261(20) AutoMARK Voter Assist Terminal (VAT). AutoMARK VAT is an electronic vote-marking device certified for use only with Election Systems & Software Unity 2.5 voting system, including the M100 precinct count optical scanner and the Model 650 central count optical scanner. It shall not be used with any other version of an Election Systems & Software voting system or with any another voting system.

a. Acceptance testing. Upon receipt of the equipment from the vendor, the commissioner shall subject each AutoMARK Voter Assist Terminal to a thorough acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of all functionalities of the device.

b. Audio ballot preparation. Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate's name. The same voice shall be used for the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

c. Pre-election testing. Each AutoMARK VAT shall be tested thoroughly before each election in which it will be used.

(1) Before use of the AutoMARK VAT at any election, the commissioner shall follow the pre-election inspection procedure prescribed in AutoMARK System Installation and Maintenance Guide, AutoMARK Voter Assist Terminal A100 SQS-5010, revision 18, May 3, 2005, pages 24 through 28; and the testing procedures prescribed in AutoMARK Jurisdiction Guide SQS-5061-003-R, revision 20, April 26, 2005, pages 22 through 24. Although the testing procedures in the Jurisdiction Guide also appear in the AutoMARK Pollworker's Guide, precinct election officials shall not be instructed to perform these tests. All testing shall be completed before election day.

(2) The public test for the VAT shall verify that the correct visual and audio ballots are installed on each VAT. Each voting position on the AutoMARK VAT shall be selected and deselected to demonstrate that it is functional. For each office on the ballot, the first position (or last or other standard choice) shall be left selected to demonstrate the function of the ballot-marking device. Ballots printed during the public test shall be tabulated using the M100 or Model 650 ballot scanner.

d. Compact flash memory cartridge or card. The compact flash memory cartridge is programmed for each election and holds the offices, candidates and other information necessary to provide the correct ballot for each voter who will be using the AutoMARK VAT. The compact flash memory cartridge shall be installed before AutoMARK VAT is locked,

SECRETARY OF STATE[721](cont'd)

sealed and shipped to the polling place for election day. In addition to locking the memory cartridge access door, the commissioner shall seal the door with a numbered seal, record the seal number, and provide it to the precinct election officials as required by 721—22.51(52). Between delivery to the polling place and the time the precinct officials arrive, the AutoMARK VAT shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged. The commissioner shall not provide the election officials with keys to the memory cartridge access door.

e. Print cartridge. For primary and general elections, the commissioner shall install a new print cartridge in each AutoMARK VAT. For all other elections, the commissioner shall determine that the cartridge contains enough ink to last all day. The commissioner shall consider the number of votes that may be cast on each ballot, the number of registered voters in each precinct where the AutoMARK VAT will be used, and the anticipated turnout for that precinct. The compartment containing the print cartridge shall be sealed following installation of the print cartridge. The precinct election officials shall be provided with the seal number and shall verify on election morning that the seal is present and undamaged.

f. Calibration testing. The commissioner shall provide for printer and screen calibration to be tested after delivery of the AutoMARK VAT and before election day. The delivery staff shall keep a log for each AutoMARK VAT and record the machine serial number, the precinct name or number, date and time of the test, the name of the person performing the test and the lifetime counter number at the completion of the test. The ballot to be used in the calibration test shall be provided to the tester. It shall be labeled with the precinct name and election date. The completed calibration test ballot shall be kept with the election records.

g. AutoMARK VAT security keys. The security key is used to turn on the AutoMARK VAT and to enable the device for voting. Each security key for the AutoMARK VAT shall be labeled and numbered. Possession of the keys shall be restricted to precinct election officials and authorized members of the commissioner's staff. Possession of the keys shall be monitored. The precinct election official shall sign a receipt when the official receives the key. The commissioner shall sign a receipt when the official returns the key. The receipts shall be kept with the official records of the election. The commissioner shall maintain a log of the keys in the possession of commissioner's staff members.

h. Table. The table used to support the AutoMARK VAT shall meet the following requirements: The table shall be sturdy enough to hold the 40-pound AutoMARK safely without wobbling. Knee clearance shall be at least 27 in (685 mm) high, 30 in (760 mm) wide, and 26 in (660 mm) deep. The top of the table shall be from 28 in to 34 in (710 mm to 865 mm) above the floor.

ARC 4975B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

The Code of Federal Regulations (CFR) was updated in October 2005, and the Department needs to cite the current version in these rules. No changes to 49 CFR, Parts 365-368 and 370-379 have occurred.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than April 4, 2006.

A meeting to hear requested oral presentations is scheduled for Thursday, April 6, 2006, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 327B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, 2004 2005, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

NOTICE—PUBLIC FUNDS INTEREST RATES

ARC 4977B

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for March is 6.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective March 9, 2006, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 1.75%
- 32-89 days Minimum 2.40%
- 90-179 days Minimum 2.95%
- 180-364 days Minimum 3.20%
- One year to 397 days Minimum 3.40%
- More than 397 days Minimum 4.65%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

Pursuant to Iowa Code sections 17A.4 and 476.2 and 47 U.S.C. Section 214(e), the Utilities Board (Board) gives notice that on February 24, 2006, the Board issued an order in Docket No. RMU-06-1, In re: Eligibility, Certification, and Reporting Requirements for Eligible Telecommunications Carriers [199 IAC 39], “Order Commencing Rule Making,” to receive public comment on the proposed amendments to 199 IAC 1, 22, and 39 proposing eligibility, certification, and reporting requirements for carriers seeking to be designated as eligible telecommunications carriers (ETCs).

On March 17, 2005, the Federal Communications Commission (FCC) released its “Report and Order” in CC Docket No. 96-45¹ (Report and Order). The Report and Order adopted certain recommendations made by the Federal-State Joint Board on Universal Service regarding minimum eligibility, certification, and reporting requirements for carriers seeking to be designated as ETCs. In addition, the Report and Order also permits states to extend generally applicable consumer protection requirements to all ETCs, including wireless carriers. As part of the Report and Order, the FCC encouraged states exercising jurisdiction over ETC designations pursuant to 47 U.S.C. Section 214(e)(2) to adopt the same requirements.

The Board proposes to adopt the FCC’s requirements, with some revisions. The Board proposes to adopt the FCC’s recommended new eligibility requirements and annual reporting and certification requirements for all carriers seeking ETC designation. In addition, the Board proposes that in the case of wireline carriers, the Board’s current service quality rules are consistent with federal law and are sufficient to satisfy the FCC’s requirements for consumer protection and service quality standards. For wireless ETCs, however, in addition to the service quality reporting requirements set forth in the Board’s current rules and to remain consistent with the designation framework established in the *Virginia Cellular ETC Designation Order*² and *Highland Cellular ETC Designation Order*³, the Board proposes to adopt the FCC’s suggestion that a commitment by wireless carriers to

¹See *In re: Federal-State Joint Board on Universal Service, “Report and Order,”* CC Docket No. 96-45, issued March 17, 2005.

²See *In re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia,* “Memorandum Opinion and Order,” CC Docket No. 96-45, 19 FCC Rcd. 1563 (2004).

³See *In re: Federal-State Joint Board on Universal Service; Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia,* “Memorandum Opinion and Order,” CC Docket No. 96-45, 19 FCC Rcd. 6438 (2004).

UTILITIES DIVISION[199](cont'd)

comply with the 2006 Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service will satisfy the consumer protection requirement for a wireless ETC applicant seeking designation. A copy of the CTIA Consumer Code for Wireless Carriers will be available for review at the Board's Records Center and is also available at www.wow-com.com/pdf/The_Code.pdf.

The order commencing rule making contains a more thorough discussion of the reasons for the proposed rule making. The order is available on the Board's Web site at www.state.ia.us/iub.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before April 4, 2006, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 9 a.m. on Wednesday, April 26, 2006, in the Board's hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code section 476.2 and 47 U.S.C. Sections 214(e) and 254.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph **1.9(5)"c"** as follows:

c. Materials exempted pursuant to requests deemed granted by the board. Requests that material or information be withheld from public inspection that contain negotiated transportation rates and prices for natural gas supply, reservation charges for portfolio gas supply contracts, and terms and prices for all hedging activity including both financial hedges and weather-related information included in monthly purchased gas adjustment filings, annual purchase gas adjustment filings, annual purchased gas adjustment reconciliations, periodic filings related to changes in purchased gas adjustment factors, negotiated purchase prices for electric power, fuel, and transportation, customer-specific information, power supply bills in support of energy adjustment clause filings, *network development information*, or the financial records filed by applicants for certificates of convenience and necessity to provide competitive local exchange service shall be deemed granted pursuant to Iowa Code section 22.7(3), as a trade secret, or pursuant to Iowa Code section 22.7(6), as a report to a government agency which, if released, would benefit competitors and would serve no public purpose, or pursuant to both sections, provided that the confidential portions of the filings are identified and segregated and an attorney for the company or a corporate officer avers that those portions satisfy Iowa Code section 22.7(3) or 22.7(6), or both, as interpreted by the Iowa Supreme Court. The information shall be held confidential by the board upon filing and will be subject to the provisions of 199 IAC 1.9(8)"b"(3).

ITEM 2. Rescind subrule **22.2(7)**.

ITEM 3. Amend subrule **39.2(3)** by adding **new** paragraphs "**c**" through "**i**" as follows:

c. Submit an explanation of how the carrier will provide each of the supported services listed in 39.2(1).

d. Submit a description, including detailed map or maps, of the area or areas for which ETC designation is sought. Commercial mobile radio service (CMRS) providers, as defined in 47 CFR Parts 20 and 24, shall file maps identifying existing tower cite locations for CMRS cell towers.

e. Submit a network improvement plan. An ETC applicant shall submit a two-year plan specifically describing its proposed improvements or upgrades to its network on a wire center basis throughout its proposed designated service area. The plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent support. The plan must demonstrate: (1) how signal quality, coverage, or capacity will improve in the designated area due to receipt of support; (2) the projected start date and completion date for each improvement, including the estimated amount of investment per project funded by high-cost support; (3) the specific geographic areas where improvements will be made; and (4) the estimated population that will be served as a result of the improvements. This information shall be reported for each wire center in each service area where support is received, or the carrier shall provide an explanation of why improvements in a specific wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. Carriers that are not requesting high-cost support shall indicate this in their applications. Carriers that are not seeking or receiving high-cost support are not required to file network improvement plans, nor are they required to file annual updates.

f. Demonstrate compliance with applicable consumer protection standards. Wireline telecommunications carriers shall commit to complying with the consumer protection rules set out in 199—Chapters 6 and 22. Wireless telecommunications carriers shall commit to complying with the following minimum consumer protection standards:

(1) Provide disclosure rates and terms of service to consumers. For each rate plan offered to new consumers, wireless carriers shall make available to consumers in collateral or other disclosures at point of sale and on their Web sites, at a minimum, the following information, as applicable:

1. The calling area for the plan;
2. The monthly access fee or base charge;
3. The number of airtime minutes included in the plan;
4. Any night and weekend minutes included in the plan or other differing charges for different time periods and the time periods when night and weekend minutes or other charges apply;
5. The charges for excess or additional minutes;
6. Per-minute long distance charges or whether long distance is included in other rates;
7. Per-minute roaming or off-network charges;
8. Whether any additional taxes, fees or surcharges apply;
9. The amount or range of any such fees or surcharges that are collected and retained by the carrier;
10. Whether a fixed-term contract is required and, if so, its duration;
11. Any activation or initiation fee; and
12. Any early termination fee that applies and the trial period during which no early termination fee will apply.

(2) Make available maps showing where service is generally available. Wireless carriers shall make available at point

UTILITIES DIVISION[199](cont'd)

of sale and on their Web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps shall be generated using generally accepted methodologies and standards to depict outdoor coverage. All such maps shall contain an appropriate legend concerning limitations and variations in wireless coverage and map usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers shall periodically update such maps as necessary to keep the maps reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers shall request and incorporate roaming partners' coverage maps that are generated using similar industry-accepted criteria or, if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

(3) Provide contract terms to customers and confirm changes in service. When a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier shall provide or confirm the material terms and conditions of service with the customer.

(4) Allow a trial period for new service. When a customer initiates service with a wireless carrier, the customer shall be informed of and given a period of not less than 14 days to try out the service. The carrier shall not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and exchange policies. Other charges, including airtime usage, may still apply.

(5) Provide specific disclosure in advertising. In advertising of prices for wireless service or devices, wireless carriers shall disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows:

1. Activation or initiation fees;
2. Monthly access fees or base charges;
3. Any required contract term;
4. Early termination fees;
5. The terms and conditions related to receiving a product or service for "free";
6. The times of any peak and off-peak calling periods;
7. Whether different or additional charges apply for calls outside the network or outside designated calling areas;
8. For any rate plan advertised as "nationwide" (or using a similar term), the carrier shall have available substantiation for this claim;
9. Whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term;
10. Whether any additional taxes, fees, or surcharges apply; and
11. The amount or range of any such fees or surcharges collected and retained by the carrier.

(6) Separately identify carrier charges from taxes on billing statements. On customers' bills, the carrier shall distinguish monthly charges for service and features and other charges collected and retained by the carrier from taxes, fees, and other charges collected by the carrier and remitted to federal, state, or local governments. Carriers shall not label cost recovery fees or charges as taxes.

(7) Provide customers the right to terminate service for changes to contract terms. Carriers shall not modify the material terms of their subscribers' contracts in a manner that is

materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

(8) Provide ready access to customer service. Customers shall be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information shall be provided to customers on line and on billing statements. Each wireless carrier shall provide information about how customers may contact the carrier in writing, by toll-free telephone number, via the Internet, or otherwise with any inquiries or complaints, and this information shall be included, at a minimum, on all billing statements, in written responses to customer inquiries, and on carriers' Web sites. Each carrier shall also make such contact information available, upon request, to any customer calling the carrier's customer service department.

(9) Promptly respond to consumer inquiries and complaints received from government agencies. Inquiries for information or complaints to a wireless ETC shall be resolved promptly and courteously. If a wireless ETC cannot resolve a dispute with the applicant or customer, the wireless ETC shall inform the applicant or customer of the right to file a complaint with the board. The wireless ETC shall provide the following board address and toll-free telephone number: Iowa Utilities Board, Customer Service, 350 Maple Street, Des Moines, Iowa 50319-0069; 1-877-565-4450. When the board receives a complaint that includes necessary information outlined in rule 199—39.2(476), the procedures set out in 199—Chapter 6, "Complaint Procedures," shall be followed. When a customer submits to the board a written complaint alleging an unauthorized change in service, the complaint shall be processed by the board pursuant to 199—Chapter 6.

(10) Abide by policies for protection of customer privacy. Each wireless carrier shall abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws and shall make available to the public its privacy policy concerning information collected on line.

g. Demonstrate compliance with applicable service quality standards. Wireline ETC applicants shall demonstrate that they will comply with applicable service quality standards set forth in 199—Chapter 22. All ETC applicants shall commit to complying with the service quality reporting requirements set forth in 199—39.5(476).

h. Demonstrate the ability to maintain a reasonable amount of backup power to ensure functionality without an external power source, demonstrate the ability to reroute traffic around damaged facilities and demonstrate the capability of managing traffic spikes due to emergencies. ETCs are required to certify annually that they are able to function in emergency situations.

i. Demonstrate a commitment to offer a local usage plan comparable to the one offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link-Up discounts at rates, terms, and conditions comparable to the Lifeline and Link-Up offerings of the incumbent local exchange carrier providing service in the relevant service area.

j. File a statement that the carrier acknowledges that it shall provide equal access if all other eligible carriers in that service area relinquish their designations pursuant to Section 214(e) of the Telecommunications Act of 1996.

UTILITIES DIVISION[199](cont'd)

k. Demonstrate that granting ETC designation to the carrier is in the public interest. The public interest analysis shall include discussion of the benefits of increased consumer choice and, if relevant, of the benefits of providing consumer choices on service offerings in rural and high-cost areas. The public interest analysis shall also include discussion of the particular advantages and disadvantages of the applicant's offering. For example, the analysis may discuss the potential benefits of mobility that wireless carriers provide in geographically isolated areas, the potential impact on toll charges to affected consumers, and the potential for consumers to obtain services, such as voice mail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services, comparable to those provided in urban areas. The analysis shall also address the disadvantages of dropped-call rates and poor coverage.

1. Respond to board requests for information related to the status of local voice service markets or facilities. Board requests may include requests for surveys on the number of customers using specific services, facilities, or service packages and explanations of services or service packages, pricing on services offered, carrier advertising efforts, and market trends.

ITEM 4. Amend rule 199—39.5(476) as follows:

199—39.5(476) Quality of service reporting by eligible telecommunications carriers. Carriers designated by the utilities board as eligible to receive universal service support pursuant to 47 U.S.C. § 214(e) must measure and report to the board the quality of service performance for the criteria listed below. Quality of service reporting shall be provided annually in a format determined by the board. *The initial annual reporting period shall be from January 1 to December 31, 2005, and for each calendar year thereafter. Carriers shall file the initial reports on or before August 1, 2006, and on or before May 1 for each calendar year thereafter. Carriers shall file both paper and electronic copies.*

1. to 4. No change.

5. *Progress updates on the carrier's two-year service quality improvement plan. This report shall include maps detailing progress toward meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level.*

6. *Detailed information on outages in the ETC's network. This report shall include detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least 10 percent of the end users served in a designated service area or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Report-*

ing Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include the date and time of onset of the outage; a brief description of the outage and its resolution, the particular services affected, the geographic areas affected by the outage, and the steps taken to prevent a similar situation in the future; and the number of customers affected.

7. *The number of requests for service from potential customers that were unfulfilled for the past year.*

8. *The number of complaints per 1000 handsets or lines.*

ITEM 5. Add **new** rule 199—39.6(476) as follows:

199—39.6(476) Universal service certification application.

39.6(1) Certification to be filed with the board. Any carrier desiring to continue to receive federal high-cost universal service support shall file with the board no later than August 1, 2006, and May 1 of each calendar year thereafter, an original and two copies of an affidavit and shall file one copy with the consumer advocate division of the department of justice.

39.6(2) Content of certification. Each affidavit shall be titled "Certification of [Company Name]." The company name shall be the same name shown on the carrier's tariff as filed with the board. The affidavit shall include the study area code (SAC) number associated with the company. The affidavit shall be sworn and notarized and shall be executed by an authorized corporate officer. The affidavit shall certify that the carrier will use the support the carrier receives pursuant to 47 CFR § 54.301, 54.305, or 54.307, or Part 36, Subpart F, of FCC regulations, or successor regulations concerning high-cost universal service support, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In addition, the affidavit shall certify that the carrier will comply with applicable service quality standards and consumer protection rules, certify that the carrier is able to function in emergency situations, certify that the carrier is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas, and certify that the carrier acknowledges that it is required to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within the service area. The affidavit shall also certify to the following: As an eligible telecommunications carrier, the carrier agrees to provide timely responses to board requests for information related to the status of local voice service markets or facilities.

39.6(3) Certifications subject to complaint or investigation. Any certification filed by a carrier shall be subject to complaint or investigation or both by the board.

CERTIFICATION OF [COMPANY NAME]

STATE OF IOWA

COUNTY OF _____

I, [authorized corporate officer], [office], [company name], being of lawful age and duly sworn, depose and state:

[Company name], [SAC number], will use the support [company name] received pursuant to 47 CFR §§ 54.301, 54.305, and/or 54.307, and/or Part 36, Subpart F, of FCC regulations or successor regulations concerning high-cost universal service support, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In addition, [company name] certifies that it will comply with applicable service quality standards and consumer protection rules, certifies that it is able to function in emergency situations, certifies that it is offering a local usage plan comparable to that offered by

UTILITIES DIVISION[199](cont'd)

the ILEC in the relevant service areas, and certifies that it acknowledges that it is required to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within the service area. As an Eligible Telecommunications Carrier, [company name] agrees to provide timely responses to Board requests for information related to the status of local voice service markets or facilities.

I further state that I am authorized by [company name] to make this statement.

[authorized officer]

Subscribed and sworn to before me this ____ day of _____, _____

Notary Public

ARC 4970B

VOTER REGISTRATION COMMISSION[821]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby gives Notice of Intended Action to amend Chapter 4, "Specifications for Voter Registration Data Processing Services Contracts and Approval Procedure for Such Contracts," Iowa Administrative Code.

This amendment rescinds Chapter 4, which is no longer applicable because Iowa Code section 47.7(2)"b" prohibits a county from establishing its own voter registration system.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 4, 2006. Such written materials should be directed to Sara Throener, Director of Voter Registration, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319; E-mail sthroener@sos.state.ia.us. Persons who wish to convey their views orally should contact the Voter Services Division at (515)281-5865 or at the Voter Services Division offices on the first floor of the Lucas State Office Building.

This amendment is intended to implement Iowa Code section 47.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind and reserve **821—Chapter 4.**

ARC 4969B

VOTER REGISTRATION COMMISSION[821]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby gives Notice of Intended Action to rescind Chapter 6, "Data Processing System Requirements for Voter Registration," Iowa Administrative Code.

This amendment rescinds Chapter 6, which is no longer applicable because Iowa Code section 47.7(2)"b" prohibits a county from establishing or maintaining its own voter registration system.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 4, 2006. Such written materials should be directed to Sara Throener, Director of Voter Registration, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319; E-mail sthroener@sos.state.ia.us. Persons who wish to convey their views orally should contact the Voter Services Division at (515)281-5865 or at the Voter Services Division offices on the first floor of the Lucas State Office Building.

This amendment is intended to implement Iowa Code section 47.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind and reserve **821—Chapter 6.**

ARC 4968B**VOTER REGISTRATION
COMMISSION[821]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby gives Notice of Intended Action to rescind Chapter 7, “County Maintenance File Input Specifications,” Iowa Administrative Code.

This amendment rescinds Chapter 7, which is no longer applicable because Iowa Code section 47.7 requires each county to participate in the single, uniform, official, centralized, interactive computerized voter registration file defined, maintained, and administered at the state level.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 4, 2006. Such written materials should be directed to Sara Throener, Director of Voter Registration, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319; E-mail sthroener@sos.state.ia.us. Persons who wish to convey their views orally should contact the Voter Services Division at (515)281-5865 or at the Voter Services Division offices on the first floor of the Lucas State Office Building.

This amendment is intended to implement Iowa Code section 47.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind and reserve **821—Chapter 7.**

ARC 4967B**VOTER REGISTRATION
COMMISSION[821]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby gives Notice of Intended Action to rescind Chapter 9, “National Change of Address Program,” Iowa Administrative Code, and to adopt a new Chapter 9 with the same title.

This amendment outlines the National Change of Address Program and outlines the responsibilities of the State Registrar of Voters and county commissioners.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 4, 2006. Such written materials should be directed to Sara Throener, Director of Voter Registration, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319; E-mail sthroener@sos.state.ia.us. Persons who wish to convey their views orally should contact the Voter Services Division at (515)281-5865 or at the Voter Services Division offices on the first floor of the Lucas State Office Building.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 4966B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code sections 48A.27(4) and 48A.28(2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

ARC 4964B**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 216.5(10) and 17A.3, the Civil Rights Commission hereby amends Chapter 2, "General Definitions," Chapter 3, "Complaint Process," and Chapter 9, "Discrimination in Housing," Iowa Administrative Code.

The rules in these chapters illustrate various methods and give instructions for mailing documents to or from the Civil Rights Commission. These amendments remove certain limitations requiring documents to be mailed by certified mail and provide the option of using cost-efficient alternatives by the Commission.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4790B**. Pursuant to Iowa Code section 216.5(10), a public hearing was held on January 26, 2006. No comments were received.

In compliance with Iowa Code section 17A.5(2)"b"(2), these amendments became effective upon filing with the Administrative Rules Coordinator on February 22, 2006. The Civil Rights Commission finds that these amendments confer a benefit by providing additional options for mailing and delivery of documents.

These amendments are intended to implement Iowa Code chapter 216.

These amendments became effective February 22, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 2, 3, 9] is being omitted. These amendments are identical to those published under Notice as **ARC 4790B**, IAB 1/4/06.

[Filed Emergency After Notice 2/22/06, effective 2/22/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4966B**VOTER REGISTRATION
COMMISSION[821]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 47.8, the Voter Registration Commission hereby rescinds Chapter 9, "National Change of Address Program," Iowa Administrative Code, and adopts a new Chapter 9 with the same title.

This amendment outlines the National Change of Address Program and outlines the responsibilities of the State Registrar of Voters and county commissioners.

The Voter Registration Commission adopted this amendment on February 13, 2006.

In compliance with Iowa Code section 17A.4(2), the Voter Registration Commission finds that notice and public participation are impracticable because there is not enough time to complete the full notice process and still complete the National Change of Address Program in a timely manner.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on February 22, 2006, because the amendment explains the new procedures for processing the National Change of Address Program, which must be completed in the first quarter of the calendar year, according to Iowa Code section 48A.28(2).

This amendment is also published under Notice of Intended Action as **ARC 4967B** to allow public comment.

This amendment is intended to implement Iowa Code sections 48A.27(4) and 48A.28(2).

This amendment became effective February 22, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Rescind 821—Chapter 9 and adopt in lieu thereof the following **new** chapter:

CHAPTER 9**NATIONAL CHANGE OF ADDRESS PROGRAM****821—9.1(48A) State registrar to organize.**

9.1(1) The state registrar of voters shall annually offer to every county commissioner the opportunity to participate in the registrar's submittal of voter registration records to a licensed vendor of the United States Postal Service for matching with national change of address (NCOA) records.

9.1(2) The vendor used by the state registrar shall be selected in accordance with all procurement laws and rules of the state and the department of administrative services.

9.1(3) The state registrar shall prepare a file of all registered voters in all counties whose commissioners have chosen to participate in the program. The file shall be in the form and format required by the vendor. The voter records contained in the file shall be categorized according to the following statuses: active, inactive, and pending.

9.1(4) Upon receipt of the NCOA data from the vendor, the state registrar shall promptly prepare a data file for each county to process in a batch-processing module at the county level. There shall be three statuses of NCOA records: processed, unprocessed, and deleted. The batch-processing screen's default shall be a display of all unprocessed records. The state registrar shall prescribe and notify each participating commissioner about how the commissioner shall process the NCOA records.

821—9.2(48A) Commissioner's responsibility upon receipt of NCOA data.

9.2(1) Commissioner to update county records. Each commissioner shall examine the data provided by the NCOA vendor and shall update the county's registration records on the basis of that data in accordance with Iowa Code subsections 48A.27(4) and 48A.27(5).

9.2(2) The commissioner shall process the registration records of voters who have moved within the county as well as the registration records of voters who have moved outside the county. For in-county moves, the commissioner shall change the voter's residential address to the address provided by the NCOA vendor. For out-of-county moves, the commissioner shall change the status of the voter registration record to "inactive."

VOTER REGISTRATION COMMISSION[821](cont'd)

9.2(3) In order to avoid complications because of scheduled special elections, the state registrar shall provide two date ranges in which the commissioner shall process NCOA records. The primary date range occurs first and shall apply to all counties that do not have a special election scheduled to be held within that date range. The second date range shall apply only to those counties that have a special election scheduled to be held during the primary date range.

821—9.3(48A) State to coordinate mailing of NCOA notifications.

9.3(1) After the county commissioners have processed NCOA records for each of the date ranges, the state registrar shall coordinate the printing and mailing of the required NCOA notifications. The state registrar shall notify the commissioners when the notifications have been mailed. Any postage-paid preaddressed return cards returned by voters will be sent back to the counties, not to the state registrar.

9.3(2) The state registrar shall send two notifications to each voter identified as having moved either within or outside a county: one to the voter's former address and one to the voter's new address as provided by NCOA records.

821—9.4(48A) Fees. The state registrar shall charge the counties for the costs of the NCOA process, including matching the records and the printing of and postage for the mailing. The fees charged to the counties shall reflect actual costs to the state registrar.

These rules are intended to implement Iowa Code sections 48A.27(4) and 48A.28(2).

[Filed Emergency 2/22/06, effective 2/22/06]

[Published 3/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/06.

ARC 4965B**BLIND, DEPARTMENT
FOR THE[111]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216B.6, the Department for the Blind hereby amends Chapter 1, "Administrative Organization and Procedures," and Chapter 7, "Business Enterprises Program," Iowa Administrative Code.

The purpose of the amendments to Chapters 1 and 7 is to (1) prohibit a member of the public from carrying dangerous weapons in Department facilities whether or not the individual possesses a permit to carry a weapon, (2) prohibit smoking in Department facilities, (3) eliminate contested case hearings as a precondition for disciplinary action involving a blind food service licensee, and (4) provide for the denial of a food service license or the revocation of an existing food service license in the event the licensee is disqualified by the licensee's obtaining a valid license to drive a motor vehicle or by driving illegally. The Department of Administrative Services previously adopted similar rules concerning smoking, building access and security on the capitol complex, and dangerous weapons as pertaining to buildings and grounds on the capitol complex.

These amendments were published under Notice of Intended Action in the January 18, 2006, Iowa Administrative Bulletin as **ARC 4827B**. A public hearing was held on February 7, 2006, at 1 p.m. in the director's conference room at the Department for the Blind, 524 4th Street, Des Moines. One member of the public attended and spoke in favor of the proposed amendments as they affect Chapter 7. Eight letters were received, all favoring the adoption of the noticed amendments to Chapter 7. No comments were received pertaining to the proposed amendments to Chapter 1. No changes have been made to the amendments published under Notice.

These amendments will become effective April 19, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.4, 1.13, 7.8(1), 7.10(5) to 7.10(13), 7.17] is being omitted. These amendments are identical to those published under Notice as **ARC 4827B**, IAB 1/18/06.

[Filed 2/22/06, effective 4/19/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4947B**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 1, "Introduction," and adopts a new Chapter 1, "Introduction, Abbreviations and Definitions," Iowa Administrative Code.

The new chapter contains definitions for words and phrases that are used in more than one chapter under agency number 321. Definitions that are specific to only one chapter have been moved to that chapter. Abbreviations that are common to more than one chapter under agency number 321 are given in this chapter. The order of precedence for federal and state regulations is given.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4659B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received; however, as a result of review of other chapters under agency number 321 the following change was made to this chapter:

The definition of "exploitation" was added to rule 1.5(231) with a notation regarding the use and derivation of the definition dependent on the subject matter being regulated. The new definition reads as follows:

"'Exploitation' (OAA or 235B; dependent on the rule content, the source of the appropriate definition will be referenced in the individual chapter) means:

"1. (OAA) The illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain; or

"2. 'Exploitation' as defined in Iowa Code chapter 235B."

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapters 231, 231B, 231C, 231D, 235B and 249H.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 1] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 4659B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4949B**ELDER AFFAIRS
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 2, "Department of Elder Affairs Established," and adopts a new Chapter 2, "Department of Elder Affairs," Iowa Administrative Code.

The new chapter rewrites the current chapter to eliminate obsolete information, such as references to sections of the Iowa Code or rules which have changed or have been eliminated. Language which repeated the Code of Iowa has been removed. A mission statement and definitions have been added. The names and responsibilities of the various divisions and offices of the Department have been brought into line with current operating procedures and legal requirements for the Department.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4660B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

The Department has made a change to the new chapter from that published under the Notice of Intended Action. The rule in existing Chapter 2 related to the Department complaint procedure has been added to the new chapter; no changes were made to that rule. New rule 2.9(231) reads as follows:

“321—2.9(231) Department complaint procedure.

“2.9(1) Aggrieved party identified. An aggrieved party is any agency, organization, or individual that alleges that the party’s rights have been denied by action of the department or commission, AAA or AAA subcontractor.

“2.9(2) Appeals to the department from the AAA level.

“a. Complaints and grievances at the AAA level by participants, senior internship program applicants and enrollees, applicants to provide service, service providers, or subcontractors shall be heard first by the AAA using the AAA’s procedures.

“b. Local complaint procedures shall be exhausted before contacting the department.

“c. Senior internship program applicants and enrollees shall use the procedure set forth in 321—subrule 10.5(5).

“2.9(3) Request for hearing.

“a. An aggrieved party or a party appealing an AAA-level decision has 30 calendar days from receipt of written notice of action to request a hearing.

“b. Within 15 calendar days of receipt of a request for a hearing, the department will transmit the request to the department of inspections and appeals pursuant to rule 481—10.4(10A) and will notify the aggrieved party of this transmittal. The department of inspections and appeals shall provide the hearing pursuant to 481—subrules 10.4(1) to 10.4(4).

“2.9(4) Appeals.

“a. Parties have 30 calendar days from the mailing date of the decision by the department of inspections and appeals to appeal the decision to the commission. If no appeal is filed, the hearing decision becomes final 30 days from the date of decision.

“b. Appeals to the commission shall be filed with the executive director of the department of elder affairs at the location identified in subrule 2.3(2).

“c. On appeal, the commission shall permit each party to file exceptions, present briefs and, with the consent of the commission, present oral arguments to the commission. The commission will establish a deadline for submission of the written exceptions, briefs and requests for continuances and will notify the parties of the deadline.

“d. The commission will base its decision on the evidence contained in the record made before the department of inspections and appeals and may permit the parties to submit new evidence at the commission’s discretion.

“e. The commission will render a decision on the appeal within 60 days of the date that the appeal was filed unless either party has requested and received a continuance. For purposes of this paragraph, the 60 days shall exclude Saturdays, Sundays and holidays.

“f. Request for continuance shall be made in writing and the reasons for the request shall be stated. The request shall be filed with the department at the address given in subrule 2.3(2).

“g. The commission’s decision on appeal is effective immediately unless otherwise specified in the decision.

“2.9(5) Appeal by applicants denied designation as a planning and service area. Any applicant for designation as a planning and service area whose application is denied and who has been provided a hearing by the department of inspections and appeals and has received a written appeal decision by the commission may appeal the denial to the federal commissioner of the Administration on Aging in writing within 30 calendar days of receipt of the commission’s decision.

“2.9(6) Judicial review. A party that seeks judicial review shall first exhaust all administrative remedies as follows:

“a. A party shall appeal the decision of the administrative law judge as provided in subrule 2.9(4) and receive a decision from the commission as provided in subrule 2.9(4), paragraph ‘e.’

“b. Petition for judicial review of the commission’s decision shall be filed within 30 calendar days after the decision is issued.”

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapter 231.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 2] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 4660B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]

[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4950B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 4, “Department Planning Responsibilities,” Iowa Administrative Code, and adopts a new Chapter 4 with the same title.

The new chapter has been completely reorganized and rephrased from the current chapter to clarify and consolidate the Department planning process into sequential order. The portions of the chapter relating to planning by the Area Agencies on Aging have been removed and placed in 321—Chapter 6.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4661B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

There are no changes in the new chapter from the Notice of Intended Action.

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapter 231.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 4] is being omitted. These rules are identical to those published under Notice as **ARC 4661B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4951B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 5, "Department Fiscal Policy," Iowa Administrative Code, and adopts a new Chapter 5 with the same title.

New Chapter 5 has been completely reorganized and rephrased from the current Chapter 5 to clarify and consolidate the Department fiscal process and policy into rules governing the funding sources and their uses. Obsolete references to Older Americans Act titles have been removed and the rules have been updated to reflect current practices. Duplicative language has been removed and portions of the chapter have been removed and placed in a chapter more appropriate to their subject matter.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4662B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

Subrule 5.19(1) has been changed to clarify that appropriate records of equipment and property, including real property, must be maintained. Subrule 5.19(1) now reads as follows:

"5.19(1) Responsibilities of grantees and suppliers. All grantees or suppliers that use funds received from the department or AAA to purchase equipment or property, including real property, shall maintain appropriate records of all such property."

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapter 231.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 5] is being omitted. Except for the change noted above, these rules are identical to those published under Notice as **ARC 4662B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4952B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 6, "Area Agency on Aging Planning and Administration," Iowa Administrative Code, and adopts a new Chapter 6 with the same title.

This chapter has been completely reorganized and rewritten. Text has been moved from Chapters 4 and 5 to this chapter, and rules have been rephrased to eliminate duplicative language.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4663B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

There are no changes in the new chapter from the Notice of Intended Action.

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapter 231.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 6] is being omitted. These rules are identical to those published under Notice as **ARC 4663B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4948B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 7, "Area Agency on Aging Service Delivery," Iowa Administrative Code, and adopts a new Chapter 7 with the same title.

This chapter has been completely reorganized and rewritten; a large portion of the text of the current chapter has been moved to other chapters dealing with Area Agency on Aging functions. Language has been rephrased to eliminate duplicative language and to align the chapter with current federal regulations. The requirements for Title III-G of the Older Americans Act covering prevention of abuse and neglect have been deleted from this chapter; a new chapter is created to cover all aspects of this subject (see **ARC 4954B** herein).

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4664B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

There are no changes in the new chapter from the Notice of Intended Action.

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapters 231.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 7] is being omitted. These rules are identical to those published under Notice as **ARC 4664B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4953B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department hereby adopts amendments to Chapter 10, "Senior Internship Program (SIP)," Iowa Administrative Code.

Definitions related to the Senior Internship Program have been moved from Chapter 1 to Chapter 10. No changes are made in these definitions or to any other part of Chapter 10.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4665B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

There are no changes in the amendments from the Notice of Intended Action.

The Commission adopted the amendments during the Commission meeting held on February 10, 2006.

These amendments will become effective on May 1, 2006.

These amendments are intended to implement Iowa Code chapter 231.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [10.2 to 10.7] is being omitted. These amendments are identical to those published under Notice as **ARC 4665B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4954B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby adopts a new Chapter 12, "Elder Abuse, Neglect or Exploitation Prevention and Awareness and Mandatory Reporter Training," Iowa Administrative Code.

This chapter establishes methods to increase awareness of elder abuse, neglect or exploitation among service providers, health care professionals, county attorneys, law enforcement, community change agents and the general public as provided in Iowa Code chapter 235B. The chapter implements the program by authorizing the Department of Elder Affairs to develop and maintain a mandatory reporter training manual and to certify trainers.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4666B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006.

The following changes have been made to this chapter as a result of comments received:

The chapter has been rearranged and the chapter title has been changed to distinguish between the portions of the chapter regarding the public awareness program and the program for training mandatory reporters of elder abuse. The acronym "(OAA)" has been added in the definitions of "exploitation" and "physical harm" to clarify the derivation of the terms being used. These changes were made to clarify the distinction between the definitions needed in this chapter and those in Iowa Code chapter 235B and are not considered to be substantive changes in the rules.

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapter 231 and section 235B.16 and the federal Older Americans Act.

The following new chapter is adopted.

CHAPTER 12 ELDER ABUSE, NEGLECT OR EXPLOITATION PREVENTION AND AWARENESS AND MANDATORY REPORTER TRAINING

321—12.1(231) Authority. This chapter implements the:

1. Prevention and awareness of elder abuse, neglect, or exploitation program as provided in Iowa Code chapter 231 and in accordance with the federal Older Americans Act; and
2. Mandatory reporter training as provided in Iowa Code chapter 235B.

321—12.2(231) Purpose. This chapter establishes methods to increase the awareness of elder abuse, neglect, or exploitation among providers, health care professionals, county attorneys, law enforcement, community change agents and the general public and establishes criteria for mandatory reporter training as required in Iowa Code chapter 235B.

321—12.3(231) Elder abuse, neglect, or exploitation prevention and public awareness. In accordance with Iowa Code chapter 231 and Title VII of the Older Americans Act, the department shall develop and enhance programs for the

ELDER AFFAIRS DEPARTMENT[321](cont'd)

prevention of elder abuse, neglect and exploitation, including but not limited to public awareness and education.

12.3(1) Definitions. Words and phrases used in this rule shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions apply to this rule:

“Exploitation” (OAA) means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

“Physical harm” (OAA) means bodily injury, impairment, or disease.

12.3(2) Funding. Funding is provided by Title VII of the federal Act as well as other funds which may be available for activities directed toward the prevention of abuse, neglect and exploitation of elders.

321—12.4(231,235B) Dependent adult abuse mandatory reporter training. Words and phrases used in this rule shall be as defined in Iowa Code chapter 235B.

12.4(1) In accordance with Iowa Code section 235B.16(2), the department shall develop and maintain a dependent adult abuse mandatory reporter training manual. The curriculum shall comply with the specifications of the department of public health’s abuse education review panel as provided in 641 IAC 93.

12.4(2) The department shall instruct and certify trainers to deliver the DEA dependent adult abuse mandatory reporter training approved curriculum.

12.4(3) The instruction shall include, but is not limited to, laws, rules and regulations relating to all forms of dependent adult abuse and reporting requirements.

12.4(4) Prior to an individual’s conducting mandatory reporter training with the DEA curriculum, that person must become a certified trainer by completing the required training from the DEA.

12.4(5) The trainer’s certification shall be valid for three years from the date of issuance and must be renewed by re-taking the instruction.

12.4(6) DEA may revoke a trainer’s certification for noncompliance with the training requirements. Such a revocation would occur only after a written warning.

12.4(7) It is the responsibility of certified trainers to keep the department notified of changes in contact information, such as address, E-mail, and telephone number. Certified trainers are also responsible for regularly checking the department’s Web site for updates to the curriculum. Updates shall be posted on the department’s Web site no later than July 1.

These rules are intended to implement Iowa Code chapter 231 and section 235B.16 and the Older Americans Act.

[Filed 2/21/06, effective 5/1/06]

[Published 3/15/06]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/06.

ARC 4955B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 15, “Elderly Services Program,” and adopts a new Chapter 15, “Elder Abuse Initiative, Emergency Shelter and Support Services Projects,” Iowa Administrative Code.

This chapter applies to the elder abuse initiative, emergency shelter and support services projects as authorized by Iowa Code section 231.56A. This chapter covers the funding, eligibility and application process for an elder abuse initiative, emergency shelter and support services project created through partnerships with Area Agencies on Aging, the Department of Human Services, local and state law enforcement officials, care providers and other persons or entities with responsibilities for Iowa’s elders.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4667B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. The following changes have been made to this chapter as a result of comments received.

In rule 15.3(231), the acronym “(OAA)” has been added in the definitions of “exploitation” and “physical harm” to clarify the derivation of the terms being used. These changes were made to clarify the distinction between the definitions needed in this chapter and those in Iowa Code chapter 235B and are not considered to be substantive changes in the rules. The definitions now read as follows:

“‘Exploitation’ (OAA) means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

“‘Physical harm’ (OAA) means bodily injury, impairment, or disease.”

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapters 231 and 249H.

The following amendment is adopted.

Rescind 321—Chapter 15 and adopt the following **new** chapter:

CHAPTER 15

ELDER ABUSE INITIATIVE, EMERGENCY SHELTER AND SUPPORT SERVICES PROJECTS

321—15.1(231) Authority. The elder abuse initiative, emergency shelter and support services projects are authorized by Iowa Code section 231.56A.

321—15.2(231) Purpose. The purpose of these projects is to focus on the prevention, intervention, detection and reporting of elder abuse, neglect and exploitation by presenting elders with options to enhance their lifestyle choices.

321—15.3(231) Definitions. Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

“Elder abuse initiative” or “EAI” means a service delivery system created through partnerships with the AAA, the de-

ELDER AFFAIRS DEPARTMENT[321](cont'd)

partment of human services, law enforcement, county attorneys, care providers and other stakeholders in the community for emergency shelter and support services.

“Exploitation” (OAA) means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

“Physical harm” (OAA) means bodily injury, impairment, or disease.

“Request for proposal” or “RFP” means a document issued by the department, in accordance with Iowa Code section 8.47 and 11 IAC 105, 106 and 107, detailing the process for submitting an application for designation as a new or expanded EAI project and the criteria for qualification.

321—15.4(231,249H) Funding. Funding is provided by the senior living trust fund created in Iowa Code chapter 249H as well as other funds which may be available for activities directed toward the prevention of abuse, neglect and exploitation of elders. Requirements of Iowa Code section 231.56A(5) and (6) apply to funds awarded for EAI projects.

321—15.5(231) Eligibility.

15.5(1) Only applicants that meet the requirements of Iowa Code section 231.56A may apply for designation as EAI projects.

15.5(2) A qualified AAA may apply to the department for a new EAI for one or more counties within the AAA’s boundaries with funding, or may apply to expand an existing EAI into one or more counties within the AAA boundaries with or without funding as specified in the RFP issued by the department.

15.5(3) Project activities including, but not limited to, public education and the dissemination of information may supplement prior activities.

15.5(4) AAA shall implement the activities in coordination with local groups, individuals and agencies, such as the department of human services’ multidisciplinary committee.

321—15.6(231) Application process.

15.6(1) In a fiscal year in which funding is available, the department shall release, by July 1, an RFP detailing the application requirements, type of EAI requested and the criteria for qualification for new projects or expansion counties. The criteria shall include compliance with Iowa Code section 231.56A(3). The EAI designation and funding are awarded based on these criteria and those established in the RFP.

15.6(2) AAA that seek to initiate a new EAI or expand their current EAI service beyond that designated in the current contract may make application to the department as specified in the RFP.

15.6(3) All application materials shall be reviewed by the department and, if appropriate, a recommendation for approval made to the commission based on the completeness of the application and the apparent ability of the applicant to meet the criteria established in the Iowa Code and the RFP.

15.6(4) Upon commission approval of the department recommendation, the successful applicant shall enter into a contract with the department which delineates the responsibilities of each party.

321—15.7(231) Reporting and monitoring. Monitoring and submission of fiscal and program reports shall be in accordance with the terms of the contract as well as the requirements of this chapter.

These rules are intended to implement Iowa Code chapters 231 and 249H.

[Filed 2/21/06, effective 5/1/06]

[Published 3/15/06]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/06.

ARC 4956B

**ELDER AFFAIRS
DEPARTMENT[321]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department hereby adopts amendments to Chapter 16, “Senior Living Coordinating Unit,” Iowa Administrative Code.

The definition of and references to the Community-Based Adult Services Committee have been deleted due to use of diverse ad hoc workgroups, as needed, to provide recommendations and reports to the Senior Living Coordinating Unit. The duties of the chairperson and vice chairperson have been changed to reflect current practice.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4668B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

There are no changes in the amendments from the Notice of Intended Action.

The Commission adopted the amendments during the Commission meeting held on February 10, 2006.

These amendments will become effective on May 1, 2006.

These amendments are intended to implement Iowa Code chapters 21, 231 and 249H.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [16.1 to 16.5] is being omitted. These amendments are identical to those published under Notice as **ARC 4668B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]

[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4957B

**ELDER AFFAIRS
DEPARTMENT[321]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14(9), the Elder Affairs Department hereby rescinds Chapter 28, “Iowa Senior Living Program—Home- and Community-Based Services for Seniors,” Iowa Administrative Code, and adopts a new Chapter 28 with the same title.

The new chapter has been reorganized and rephrased to follow Iowa Code requirements and procedures. Some text

ELDER AFFAIRS DEPARTMENT[321](cont'd)

has been moved to Chapter 5. Reporting requirements have been clarified.

Notice of Intended Action was published in the November 23, 2005, Iowa Administrative Bulletin as **ARC 4669B**. Comments were to be received by the Department prior to 4 p.m. on January 6, 2006. No comments were received.

There are no changes in the new chapter from the Notice of Intended Action.

The Commission adopted the new chapter during the Commission meeting held on February 10, 2006.

These rules will become effective on May 1, 2006.

These rules are intended to implement Iowa Code chapters 231 and 249H.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 28] is being omitted. These rules are identical to those published under Notice as **ARC 4669B**, IAB 11/23/05.

[Filed 2/21/06, effective 5/1/06]

[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4984B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby adopts an amendment to Chapter 22, "Controlling Pollution," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 9, 2005, as **ARC 4651B**. A public hearing was held on December 12, 2005. No comments were received at the public hearing. One written comment was received prior to the close of the public comment period. The public comment period closed on December 14, 2005.

The submitted comment and the Department's response to the comment are summarized in the Public Participation Responsiveness Summary available from the Department. One minor modification was made from the amendments published under the Notice of Intended Action, as detailed in the description of Item 3 below.

Item 1 amends an existing construction permit exemption in Chapter 22. The exemption in 22.1(2)"m" is being modified to correlate the tank capacities in the exemption with the tank capacities in Subpart Kb, 40 CFR Part 60, new source performance standard (NSPS) for storage tanks. The NSPS was revised in 2003 and increased the capacities that are used to determine applicability of storage tanks to the NSPS. Amending 22.1(2)"m" will keep the exemption aligned with the federal regulations.

Item 2 adds applications using hot melt adhesives to the list of exempt equipment, processes and activities in 22.1(2)"x." Paragraph "x" of subrule 22.1(2) includes various equipment, processes, and activities which are generally listed as "trivial" activities in EPA's 1995 "White Paper for Streamlined Development of Part 70 Permit Applications."

Equipment, processes, and activities that have no specific applicable requirements and result in extremely small emissions are considered to be trivial activities for purposes of Part 70 (Title V) operating permit applications. Based on the Department's technical review, applications that use hot melt adhesives can also be considered to be a trivial activity in that these applications generate emissions that have little or no environmental or human health consequences and can therefore be exempted from the requirement to obtain a construction permit.

Item 3 adds four new construction permitting exemptions to Chapter 22. The new exemptions are for product labeling, research and development, regional collection centers, and cold solvent cleaning machines. In response to a comment from the U.S. Environmental Protection Agency (EPA), the definition of "research and development activities" was placed into the exemption for research and development, rather than into Chapter 20, "Definitions—Forms—Rules of Practice," as originally proposed. This change resolves EPA concerns regarding the use of the term "de minimis" as it pertains to the manufacture of commercial products, since the amount of commercial products generated during research and development activities will be limited by the low facility-wide emissions limits contained in the exemption.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments shall become effective April 19, 2006. The following amendments are adopted.

ITEM 1. Amend paragraph **22.1(2)"m"** as follows:

m. Storage tanks with a capacity of less than 10,570 19,812 gallons and an annual throughput of less than 40,000 200,000 gallons.

ITEM 2. Amend paragraph **22.1(2)"x"** by adopting the following **new** subparagraph:

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

ITEM 3. Amend subrule **22.1(2)** by adopting the following **new** paragraphs:

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

40 pounds per year of lead and lead compounds expressed as lead;

5 tons per year of sulfur dioxide;

5 tons per year of nitrogen dioxides;

5 tons per year of volatile organic compounds;

5 tons per year of carbon monoxide;

5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);

2.5 tons per year of PM10; and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

5 tons per year of hazardous pollutants (as defined in rule 22.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in subparagraph (1) above. These records shall:

1. Include a list of equipment that is included under the exemption;

2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;

3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and

4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to rules 22.4(455B) and 22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, "research and development activities" shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel; and

2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; and

3. That do not manufacture more than de minimis amounts of commercial products; and

4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner.

ll. A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other non-processing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon

tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAPsolvents in a total concentration greater than 5 percent by weight.

[Filed 2/24/06, effective 4/19/06]

[Published 3/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/06.

ARC 4981B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.299, the Environmental Protection Commission amends Chapter 40, "Scope of Division—Definitions—Forms—Rules of Practice"; rescinds Chapter 44, "Drinking Water Revolving Fund," and adopts new Chapter 44, "Drinking Water State Revolving Fund"; amends Chapter 90, "Scope of Title—Definitions—Forms"; amends Chapter 91, "Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund"; rescinds Chapter 92, "State Revolving Fund Loans for Wastewater Treatment and Water Pollution Control," and adopts new Chapter 92, "Clean Water State Revolving Fund"; and rescinds Chapter 93, "Onsite Wastewater Treatment System Assistance Program," and adopts new Chapter 93, "Nonpoint Source Pollution Control Set-Aside Programs," Iowa Administrative Code.

The amendments transfer responsibility for financial analysis and loan processing to the Iowa Finance Authority (IFA) and update program rules to reflect new, streamlined processes. These amendments include:

- Providing for an annual Intended Use Plan (IUP) with quarterly updates as needed;
- Setting interest rates, terms, and fees in the Intended Use Plan rather than in rules to allow for greater program flexibility;
- Updating project scoring criteria based on the latest federal regulations and state priorities;
- Reworking definitions to more closely correlate with federal requirements and state processes;
- Eliminating the requirement for proportionality in user charge systems;
- Adding requirements that project applicants follow department processes;
- Changing eligibility criteria for the Onsite Wastewater Treatment System Assistance Program to allow siting for multiple home systems;
- Changing eligibility criteria for animal feeding operations to allow loans to newer facilities through the Livestock Water Quality Facilities Program;
- Changing eligibility criteria in the Local Water Protection Program to require a manure management plan instead of a comprehensive nutrient management plan;
- Allowing an option for direct loans through the General Non-Point Source Program; and
- Accepting applications for the General Non-Point Source Program on a continuous basis.

Two changes in structure also are made: (1) move all program definitions to Chapter 40 (drinking water) and Chapter 90 (clean water); and (2) cover point source requirements

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

primarily in Chapter 92 and move nonpoint source requirements to Chapter 93.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4770B**. A public hearing was held January 11, 2006. As a result of comments received, the following types of changes were made to the amendments:

- Changing the requirement for Livestock Water Quality Facilities Program applicants to have a comprehensive nutrient management plan to a requirement for a manure management plan approved by the Department; and
- Changing program language and definitions to accommodate the use of planning and design loans.

The following changes were made to the amendments:

In rule 567—40.2(455B), the definition of “loan agreement” was not adopted, and the definition of “eligible cost” now reads as follows:

“‘Eligible cost’ means the cost of all labor, material, machinery, equipment, loan initiation and loan service fees, project planning, design and construction engineering services, legal fees and expenses directly related to the project, capitalized interest during construction of the project, and all other expansion, construction, and rehabilitation of all or part of a project included in the funding request placed on the draft intended use plan as a fundable project, subject to approval by the commission.”

Subrule 44.6(3) was changed and now reads as follows:

“**44.6(3)** Certified operator requirement. A system without a certified operator shall not receive loan assistance. The system must submit to the department the name, certification number and certification expiration date of the operator certified, pursuant to 567—Chapter 81, to be directly responsible (in direct responsible charge) for the operation of the facility before receiving a loan.”

In rule 567—90.2(455B), the definition of “eligible cost” now reads as follows:

“‘Eligible cost’ means the cost of all labor, material, machinery, equipment, loan initiation and service fees, facility planning, design and construction engineering services, legal fees and expenses related to the project; capitalized interest during construction of the project; and construction and rehabilitation of all or part of a project included in the funding request placed on the draft IUP as a fundable project, subject to approval by the commission.”

Paragraph 92.6(2)“e” now reads as follows:

“e. Supported activities. The IUP will include information on the types of activities to be supported by the CWSRF. The IUP will identify requests for planning and design loans and funds to be directed to the nonpoint source set-asides to implement Iowa’s nonpoint source management program.”

Subrule 92.7(1) now reads as follows:

“**92.7(1)** Application forms. An applicant may request an application package from the department. The applicant shall complete the application for placement on the IUP and shall provide documentation on the project. Forms may be obtained from the Environmental Services Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034. Forms may also be downloaded from www.iowasrf.com.”

Subrules 93.5(5) to 93.5(7) now read as follows:

“**93.5(5)** Manure management plan required. The livestock producer shall have a manure management plan approved by the department to be eligible for the loan or, as part of the loan, develop a manure management plan.

“**93.5(6)** Eligible costs. All costs directly related to the design, permitting, construction and financing of the water

pollution control facilities are eligible costs. Costs for development of a manure management plan are eligible costs.

“**93.5(7)** Ineligible costs. Costs for development of new animal feeding operations are not eligible costs. Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake. Costs for water pollution control facilities, including design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs for the purchase of land to be used for application of wastewater or manure are not eligible costs. Costs for operation and maintenance or updating a comprehensive nutrient management plan are not eligible costs. Refinancing of water pollution control facilities constructed prior to the implementation of this program is not an eligible cost.”

These amendments were adopted by the Commission on February 20, 2006.

These amendments are intended to implement Iowa Code sections 455B.291 to 455B.299, 466.8 and 466.9.

These amendments shall become effective April 19, 2006.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [40.2, Ch 44, 90.1 to 90.3, 91.1, 91.2, 91.8(1), 91.9(1), 91.10(1), 91.11(1), Chs 92, 93] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4770B**, IAB 12/21/05.

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[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4963B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners amends Chapter 202, “Discipline for Physical Therapists and Physical Therapist Assistants,” Iowa Administrative Code.

The amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4734B**. A public hearing was held on January 10, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. The Assistant Attorney General commented that the wording of the last sentence of subrule 202.5(3) needed to be clarified and that the Iowa Code reference in subrule 202.5(4) needed to be corrected. The Board approved these changes.

The amendment was adopted by the Board of Physical and Occupational Therapy Examiners on February 17, 2006.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This amendment will become effective April 19, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 148A and 272C.

The following amendment is adopted.

Adopt **new** rule 645—202.5(148A) as follows:

645—202.5(148A) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

202.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

202.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

202.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

202.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

202.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

202.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute

privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

202.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[Filed 2/17/06, effective 4/19/06]

[Published 3/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/06.

ARC 4962B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners amends Chapter 209, "Discipline for Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

The amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4733B**. A public hearing was held on January 10, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. The Assistant Attorney General commented that the wording of the last sentence of subrule 209.5(3) needed to be clarified and that the Iowa Code reference in subrule 209.5(4) needed to be corrected. The Board approved these changes.

The amendment was adopted by the Board of Physical and Occupational Therapy Examiners on February 17, 2006.

This amendment will become effective April 19, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 148B and 272C.

The following amendment is adopted.

Adopt **new** rule 645—209.5(148B) as follows:

645—209.5(148B) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

209.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

209.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

209.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

209.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

209.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

209.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

209.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[Filed 2/17/06, effective 4/19/06]

[Published 3/15/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/06.

ARC 4945B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners amends Chapter 280, "Licensure of Social Workers," Iowa Administrative Code.

The amendments provide that the Board will accept the Association of Social Work Boards (ASWB) Social Work Registry verification of academic transcripts and verification of licensure in other states.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 4, 2006, as **ARC 4786B**. A public hearing was held on January 24, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. The only change from the Notice was to renumber the new subrule adopted in Item 2 as 280.4(7).

The amendments were adopted by the Board of Social Work Examiners on February 13, 2006.

These amendments will become effective April 19, 2006. These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

The following amendments are adopted.

ITEM 1. Adopt **new** subrule 280.3(12) as follows:

280.3(12) In lieu of the requirements in subrules 280.3(4) and 280.3(5), the board will accept the ASWB Social Work Registry verification of academic transcripts and verification of licensure in other states.

ITEM 2. Adopt **new** subrule 280.4(7) as follows:

280.4(7) In lieu of the requirements in subrule 280.4(4), the board will accept the ASWB Social Work Registry verification of the ASWB examination results.

ITEM 3. Adopt a **new** unnumbered paragraph at the end of rule **645—280.7(154C)** as follows:

In lieu of the requirements in numbered paragraphs "4," "5," and "6" of this rule, the board will accept the ASWB Social Work Registry verification of academic transcripts, examination scores, and licensure in other states.

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ARC 4946B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners amends Chapter 283, "Discipline for Social Workers," and Chapter 284, "Fees," Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The first amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 7, 2005, as **ARC 4702B**. A public hearing was held on January 3, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. The Assistant Attorney General commented that the wording of the last sentence of subrule 283.5(3) needed to be clarified and that the Iowa Code reference in subrule 283.5(4) needed to be corrected. In addition, the Board removed the words "each biennium" from subrules 284.1(2) and 284.1(4) in response to comments. The Board approved these changes.

These amendments were adopted by the Board of Social Work Examiners on February 13, 2006.

These amendments will become effective April 19, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

The following amendments are adopted.

ITEM 1. Adopt **new** rule 645—283.5(154C) as follows:

645—283.5(154C) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

283.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

283.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

283.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On

judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

283.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

283.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

283.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

283.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ITEM 2. Amend subrules 284.1(2) and 284.1(4) as follows:

284.1(2) Biennial license renewal fee for a license at the bachelor's level is \$72 ~~each biennium~~; for the master's level, \$120 ~~each biennium~~; and independent level, \$144 ~~each biennium~~.

284.1(4) Reactivation fee for the bachelor's level is \$132 ~~each biennium~~; for the master's level, \$180 ~~each biennium~~; and independent level, \$204 ~~each biennium~~.

[Filed 2/14/06, effective 4/19/06]

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ARC 4971B

**PROFESSIONAL LICENSURE
DIVISION[645]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Interpreter for the Hearing Impaired Examiners hereby adopts Chapter 362, "Continuing Education for Interpreter for the Hearing Impaired Practitioners," Iowa Administrative Code.

The amendment adopts a new continuing education chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4744B**. A public hearing was held on January 10, 2006, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No comments were received. However, the Board clarified board intent regarding the required hours in subrule 362.3(2), paragraph "b."

Subrule 362.3(2), paragraph "b," now reads as follows:

"b. Each biennium, licensees shall obtain 40 hours (4 CEUs) of continuing education. The 40 hours shall in-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

clude no less than 30 hours (3 CEUs) of professional studies. The remaining 10 hours (1 CEU) may be in either professional or general studies. The board shall accept proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification in lieu of proof of the 40 hours of continuing education."

These rules will become effective April 19, 2006.

These rules are intended to implement Iowa Code chapters 21, 147, and 272C and Iowa Code Supplement chapter 154E.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 362] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 4744B**, IAB 12/21/05.

[Filed 2/23/06, effective 4/19/06]
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[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4972B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Interpreter for the Hearing Impaired Examiners hereby adopts new Chapter 363, "Discipline for Interpreter for the Hearing Impaired Practitioners," Iowa Administrative Code.

The amendment adopts a new discipline chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 21, 2005, as **ARC 4745B**. A public hearing was held on January 10, 2006, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. However, the Assistant Attorney General commented that the wording of the last sentence of subrule 363.5(3) needed to be clarified and that the Iowa Code reference in subrule 363.5(4) needed to be corrected. The Board approved these changes.

Subrules 363.5(3) and 363.5(4) now read as follows:

"363.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

"363.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1)."

These rules will become effective April 19, 2006.

These rules are intended to implement 2004 Iowa Acts, chapter 1175, and Iowa Code chapters 21, 147 and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 363] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 4745B**, IAB 12/21/05.

[Filed 2/23/06, effective 4/19/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4978B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 421.17, the Department of Revenue hereby adopts new Chapter 235, "Rebate of Iowa Sales Tax Paid," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. 28, p. 1147, on January 18, 2006, as **ARC 4833B**.

New Chapter 235 is created to implement Iowa Code Supplement section 423.4(5) and 2005 Iowa Acts, chapter 110, which provide for a rebate pilot program of Iowa sales tax to qualifying owners and operators of sanctioned automobile racetrack facilities in order to increase tourism in Iowa.

This rule is identical to that published under Notice of Intended Action.

This rule will become effective April 19, 2006, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This rule is intended to implement Iowa Code Supplement section 423.4(5) and 2005 Iowa Acts, chapter 110.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [Ch 235] is being omitted. This rule is identical to that published under Notice as **ARC 4833B**, IAB 1/18/06.

[Filed 2/24/06, effective 4/19/06]
[Published 3/15/06]

[For replacement pages for IAC, see IAC Supplement 3/15/06.]

ARC 4959B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 316.9, the Department of Transportation, on February 14, 2006, adopted an amendment to Chapter 111, "Real Property Acquisition and Relocation Assistance," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the January 4, 2006, Iowa Administrative Bulletin as **ARC 4775B**.

TRANSPORTATION DEPARTMENT[761](cont'd)

Iowa Code section 316.9 requires the Department to adopt administrative rules to ensure compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). To comply with this rule-making requirement, the Department adopts by reference Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance." This manual, which is published by the Department, is based on federal regulations, 49 CFR Part 24, which implement the Uniform Act.

This rule making adopts a new edition of Section II of the manual. Section II is revised to reflect changes made to 49 CFR Part 24. The revised federal regulations include a number of technical changes. Some of the more significant changes are:

Nonresidential (business) displacements

Nonresidential advisory services to be provided by the displacing agency are expanded. For each business to be displaced, the displacing agency is required to evaluate the availability of replacement sites and moving problems, determine the business's relocation needs and preferences and its replacement site requirements, and determine the need for specialists to assist in planning the move, moving and reinstalling personal property.

Reimbursement limits for reasonable and necessary expenses actually incurred in searching for a replacement business property are increased from \$1,000 to \$2,500.

Expenses for utility connections from the right-of-way to the replacement business site, soil testing, and one-time impact fees for anticipated heavy utility usage are reimbursable if the displacing agency determines they are reasonable and necessary. These expenses formerly were included in "reestablishment expenses," which are capped at \$10,000.

Residential displacements

A displaced tenant's income will not be considered in the base monthly rent used to determine the maximum rental assistance payment for which the tenant can qualify unless the

person is classified as "low income" based on the Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. Currently, income is a consideration for all displaced tenants.

Displaced tenants who elect to buy instead of rent replacement housing may apply the entire amount of the rental assistance payment toward a down payment instead of that part which is determined to be "necessary."

Displaced homeowners who elect to rent instead of buy replacement housing may apply the entire amount of their calculated replacement housing payment toward a rental assistance payment if justified. Currently, this type of rental assistance payment is capped at \$5,250.

A copy of the new edition of Section II of the "Uniform Manual, Real Property Acquisition and Relocation Assistance" is available from the Office of Right of Way, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by calling (515)239-1401.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 316.

This amendment will become effective April 19, 2006.

Rule-making action:

Amend rule 761—111.1(316), introductory paragraph, as follows:

761—111.1(316) Acquisition and relocation assistance manual. The ~~October 2002~~ *April 2006* edition of Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance" is adopted by reference.

[Filed 2/14/06, effective 4/19/06]

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